TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] 32

UNITED STATES OF AMERICA, APPELLANT

vs.

A & P. TRUCKING COMPANY AND
HOPLA TRUCKING COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Filed January 29, 1958

Probable jurisdiction noted March 31, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 754

UNITED STATES OF AMERICA, APPELLANT

vs.

A & P TRUCKING COMPANY AND HOPLA TRUCKING COMPANY

INDEX

1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Cr. No. 252-56

UNITED STATES OF AMERICA, *Plaintiff*,

v.

A & P TRUCKING Co., a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough and SOL LIEBMAN, *Defendants*.

Information — Filed July 5, 1956

The United States Attorney charges:

2 COUNT 1

On or about the 18th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, and, as such carrier, subject to the regulations prescribed by the Interstate Commerce Commission applying to shipments of explosives and other dangerous articles made by way of common, contract and private carriers by motor vehicle (49 C.F.R. 71 to 78), did knowingly transport by motor vehicle more than 2500 pounds, to wit, 26,712 pounds, gross weight, of chromic acid, flake, an oxidizing material, from Kearny, New Jersey, enroute to Brooklyn, New York, without having marked or placarded each side and the rear of said motor vehicle, with a placard or lettering, in letters not less than three inches high, on a contrasting background, showing that said motor vehicle was transporting dangerous commodities. (49 C.F.R. 77.823 (a); Title 18, U. S. Code, Sec. 835)

Sol Liebman, defendant, well knowing the premises aforesaid, did knowingly aid and abet said A & P Trucking Co., the said offense in manner and form aforesaid to do and commit. (Title 18, U. S. Code, Sec. 2)

2

3 COUNT 2

On or about the 18th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully permit Sol Liebman, a driver in its service, to drive its motor vehicle engaged in the transportation of chromic acid, flake, an oxidizing material, from Kearny, New Jersey to Brooklyn, New York, without said driver having been physically examined by a licensed doctor of medicine or osteopathy and having been certified by such doctor as meeting the minimum physical requirements for drivers prescribed in the Motor Carrier Safety Regulations. (49 C. F. R. 191.8; Title 49, Sec. 322 (a), U. S. Code)

4 COUNT 3

On or about the 18th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully fail to equip with a fire extinguisher its motor vehicle, a tractor bearing New York registration No. 269-457, used in the transportation of property, namely chromic acid, flake, an oxidizing material, from Kearny, New Jersey to Brooklyn, New York. (49 C. F. R. 193.95 (a); Title 49, Sec. 322 (a), U. S. Code)

5 COUNT 4

On or about the 6th day of January, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey, to Brooklyn, New York, for compensation in the amount of $74.34 without there being in force with respect to the defendant a certificate of public convenience and necessity issued

by the Interestate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 5

On or about the 15th day of January, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport potassium chloride by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Metuchen, New Jersey, to Brooklyn, New York, for compensation in the amount of $26.52 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

6 COUNT 6

On or about the 18th day of January, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport yellow prussiate of soda by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Warners, New Jersey, to Brooklyn, New York, for compensation in the amount of $74.34 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 7

On or about the 20th day of January, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly

and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport paint, dry by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Brooklyn, New York, to Elizabeth, New Jersey, for compensation in the amount of $76.13 without there being in force with respect to the defendant a certificate of public convenience and necessity issue by the Interstate Commerce Commission authorizing such interestate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

7 COUNT 8

On or about the 22nd day of January, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey, to Brooklyn, New York, for compensation in the amount of $74.34 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 9

On or about the 2nd day of February, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport, paint, dry by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Brooklyn, New York, to Elizabeth, New Jersey, for compensation in the amount of $133.61 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

8 COUNT 10

On or about the 4th day of February, 1954, in the District, of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport chromic acid, flake by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Kearny, New Jersey to Brooklyn, New ork for compensation in the amount of $40.07 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 11

On or about the 11th day of February, 1954, in the District, of New Jersey, A & P Trucking Co., defendant, a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport prussiate of soda by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Warners, New Jersey to Brooklyn, New York for compensation in the amount of $74.34 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

9 COUNT 12

On or about the 15th day of February, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as a such carrier, did transport paint, dry

by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Brooklyn, New York, to Elizabeth, New Jersey for compensation in the amount of $21.00 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 13

On or about the 23rd day of February, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport sodium bichromate by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Kearny, New Jersey, to Brooklyn, New York for compensation in the amount of $41.81 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

10 COUNT 14

On or about the 24th day of February, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey to Brooklyn, New York for compensation in the amount of $74.34 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code).

COUNT 15

On or about the 26th day of February, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport yellow prussiate of soda by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Warners, New Jersey, to Brooklyn, New York for compensation in the amount of $74.34 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

11

COUNT 16

On or about the 4th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey, to Brooklyn, New York for compensation in the amount of $74.34 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 17

On or about the 8th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport chromic acid, flake by motor

vehicle, on public highways, for Reichhold Chemicals, Inc., from Kearny, New Jersey, to Brooklyn, New York, for compensation in the amount of $48.08 without there being in force with respect to the defendant a certificate of public convenience and necessity issue by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

12

COUNT 18

On or about the 9th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport titanium sulphate cake by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey to Brooklyn, New York for compensation in the amount of $36.79 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 19

On or about the 12th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport chromic acid, flake by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Kearny, New Jersey, to Brooklyn, New York for compensation in the amount of $48.08 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

13 COUNT 20

On or about the 15th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport paint, dry by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Brooklyn, New York to Lodi, New Jersey for compensation in the amount of $21.00 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 21

On or about the 17th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey, to Brooklyn, New York for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

14 COUNT 22

On or about the 24th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport titanium sulphate cake by

motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey to Brooklyn, New York for compensation in the amount of $50.72 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 23

On or about the 26th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport yellow prussiate of soda by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Warners, New Jersey to Brooklyn, New York for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

15 COUNT 24

On or about the 30th day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport chromic acid, flake by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Kearny, New Jersey, to Brooklyn, New York, for compensation in the amount of $48.08 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 25

On or about the 31st day of March, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport paint, dry by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Brooklyn, New York to Lyndhurst, New Jersey, for compensation in the amount of $21.00 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

16 COUNT 26

On or about the 1st day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey to Brooklyn, New York for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 27

On or about the 5th day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport yellow prussiate of soda by motor vehicle, on public highways, for Reichhold Chemi-

cals, Inc., from Warners, New Jersey, to Brooklyn, New York for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

17 COUNT 28

On or about the 7th day of April, 1957, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas ~~(granular~~ technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey, to Brooklyn, New York, for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 29

On or about the 8th day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport yellow prussiate of soda by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Warners, New Jersey, to Brooklyn, New York for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

18 COUNT 30

On or about the 14th day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey, to Brooklyn, New York, for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 31

On or about the 16th day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport chromic acid, flake by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Kearny, New Jersey, to Brooklyn, New York, for compensation in the amount of $48.08 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

19 COUNT 32

On or about the 26th day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport yellow prussiate of soda by

motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Warners, New Jersey to Brooklyn, New York for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 33

On or about the 28th day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport copperas (granular technical) by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Sayreville, New Jersey, to Brooklyn, New York, for compensation in the amount of $69.69 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

20 COUNT 34

On or about the 30th day of April, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport paint, dry by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Brooklyn, New York, to Hawthorne, New Jersey, for compensation in the amount of $28.17 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

COUNT 35

On or about the 4th day of May, 1954, in the District of New Jersey, A & P Trucking Co., defendant, a partnership, composed of Alex Schub, Aldo Iafrate and Arthur Clough, a common carrier by motor vehicle, did knowingly and wilfully engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport paint, dry by motor vehicle, on public highways, for Reichhold Chemicals, Inc., from Brooklyn, New York, to Irvington, New Jersey, for compensation in the amount of $30.04 without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Sec. 306 (a) and 322 (a), U. S. Code)

HERMAN SCOTT,
United States Attorney.

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22 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Cr. 252-56

UNITED STATES OF AMERICA

vs.

A & P TRUCKING Co., a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough and SOL LIEBMAN,

Notice of Allocation — July 6, 1956

Pursuant to Rule 8 of the General Rules of this Court, I have allocated the above-entitled matter to *Newark, N. J.*

Please file pleadings and make all motions returnable there.

MICHAEL KELLER, JR.,
Clerk

By VERA A. ALEXANDER
Vera A. Alexander
Deputy Clerk

24 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Cr. No. 252-56

UNITED STATES OF AMERICA,

vs.

A & P TRUCKING COMPANY,

Appearance — Filed September 14, 1956

SIR:

You are hereby notified that I appear for A & P Trucking Co., all partners and Sol Leibman, the defendant in the above-entitled action.

A & P TRUCKING Co.
All Partners and SOL LIEBMAN
AUGUST W. HECKMAN
August W. Heckman
Attorney for defendant

880 Bergen Ave., Jersey City
Jo. Sq. 2-1113

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25 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Cr. 252-56 — PLEADING

UNITED STATES OF AMERICA

v.

A & P TRUCKING COMPANY, et al.

Before The Honorable THOMAS F. MEANEY, *U. S. D. J.*

Appearances:

FREDERIC C. RITGER, Assistant U. S. Attorney.
AUGUST W. HECHMAN and
MORTON E. KIEL [New York Bar] for defendants.

Arraignment and Plea — Sept. 14, 1956

Mr. Ritger: May it please the Court, this is a 35-count criminal information charging various violations of ICC

regulations. It charges the partnership, and I understand the three partners are present here this morning—Alex Schub, Aldo Iafrate, and Arthur Clough, doing business as A & P Trucking—and also Sol Liebman, an individual, is charged.

The Court: You appear for all of them, Mr. Heckman?

Mr. Heckman: Yes, I do, your Honor; and in addition——

The Court: How do you plead to the information.

Mr. Heckman: We plead not guilty.

26 The Court: You have been served with a copy of it?

Mr. Heckman: Yes, sir, we have, and all of the partners as well as the driver plead not guilty to the entire information.

I would like to say to your Honor that in this case I am associated with New York counsel, an esteemed member of the Bar of that State, Mr. Morton Kiel who stands to my right, 140 Cedar Street, New York, New York. He is an officer also——

The Court: Is this just an advertisement or do you desire to move his admission?

Mr. Hckman: An advertisement as well.

The Court: You desire to move his admission for the purpose of this trial.

Mr. Heckman: Yes, I move his admission pro hac vice.

The Court: All right.

Mr. Ritger: For the record, if your Honor pleases, I think it should show that the partnership is charged as an entity and not the individuals; we charge A & P Trucking Company.

The Court: All right.

Mr. Heckman: Your Honor, I would also like to reserve a period of 15 days from today's date within which to move to strike the criminal information.

The Court: When was this information filed?

Mr. Heckman: We only received it the other day.

Mr. Ritger: It was filed July 5th, sir, mailed out approximately the end of August.

27 The Court: All right. * * You may make appropriate motions at the proper time, within 15 days.

Mr. Heckman: Thank you. I will.

29 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

No. 252-56

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

A & P TRUCKING Co., a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough and SOL LIEBMAN, *Defendants*.

Notice of Motion to Quash Information — Filed Sept. 9, 1957

To The United States Attorney:

TAKE NOTICE that on Monday, May 13, 1957, I shall move before the Honorable Richard Hartshorne or such Judge as may be hearing motions on that day, for an Order quashing the Information heretofore filed against the defendants herein on the following grounds:

1. The action of the United States in instituting suit against the defendants is contrary to law (18 U. S. C. 835) and the decision of the United States District Court for the Southern District of New York in *United States of America* vs. *American Freightways Co.*, a partnership composed of Allan J. Resler and Norman Forman reported in 352 U. S. 864, 77 S. Ct. 95, also 77 S. Ct. 588.

2. For such other good and divers reasons as will be presented and argued on the return day of the motion.

AUGUST W. HECKMAN
August W. Heckman
Attorney for Defendants

31 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Criminal No. 252-56

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

A & P TRUCKING Co., a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough and SOL LIEBMAN, *Defendants*.

Order Dismissing Information — November 13, 1957

This matter having come before the Court upon motion by the defendant A & P Trucking Co., a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant, and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the A & P Trucking Co., a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under the section set forth, it is on this 13th day of November, 1957,

ORDERED that the criminal information filed with the Clerk of this Court on July 5, 1956, be and the same is hereby dismissed.

WILLIAM F. SMITH
United States District Judge

We consent to the form of the foregoing Order.

AUGUST W. HECKMAN
August W. Heckman
Attorney for Defendant

ANTHONY J. CIOFFI
Anthony J. Cioffi (*Of Counsel*)

33 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Criminal No. 252-56

UNITED STATES OF AMERICA

v.

A & P TRUCKING Co., a partnership composed of Alex Schub, Aldo Iafrate and Arthur Clough and SOL LIEBMAN, *Defendants.*

Notice of Appeal to the Supreme Court of the United States — Filed December 9, 1957

I. Notice is hereby given that the United States hereby appeals to the Supreme Court of the United States from the order entered November 14, 1957, dismissing the information which charged violations of 18 U. S. C. 835 and 49 U. S. C. 322 (a).

This appeal is taken pursuant to 18 U. S. C. 3731.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Transcript of docket entries
2. Information
3. Motion to dismiss the information
4. Order dismissing the information
5. Notice of appeal

34 III. The following question is presented by this appeal:

Whether a partnership as a legal entity is subject to criminal liability under 18 U. S. C. 835 and 49 U. S. C. 322 (a).

CHESTER A. WEIDENBURNER
Chester A. Weidenburner
United States Attorney
District of New Jersey

21

IN UNITED STATES DISTRICT COURT
Docket entries

Cr. 252-56

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
J.S. 3 A & P TRUCKING CO.,	
a partnership composed of	
Alex Schub, Aldo Iafrate and	
Arthur Clough	
SOL LIEBMAN	For Defendant:
	- August W. Heckman, Esq.
	880 Bergen Ave., Jersey City
Counts - 35	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
			"		

DATE	PROCEEDINGS
	Title 18, USC 18 - 835 & 2 49 USC 306 (a) 49 CFR 191.8 49 CFR 193.95 (a)

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
			"		

DATE	PROCEEDINGS
	Title 18, USC 18 - 835 & 2 49 USC 306 (a) 49 CFR 191.8 49 CFR 193.95 (a)
7-6-56	Criminal Information for failing to mark or placard motor vehicle used to transport dangerous poisons and aiding and abetting; permitting driver to operater motor vehicle without being physically examined and certified; failing to equip motor vehicle with fire extinguisher; transporting property in interstate commerce for compensation without authority, filed 7-5-56
7-6-56	Notice of allocation, filed (Newark)
9-17-56	Notice of Appearance as to both defendants filed 9-14-56.
9-17-56	A & P Trucking Co. - Plea - Not Guilty. (Meaney) (9-14-56)
9-17-56	Sol Liebman - Plea - Not Guilty. (Meaney) (9-14-56)
9-18-56	Transcript of plea as to both defendants filed 9-14-56.
9-10-57	Defendants notice of motion to quash information returnable 9-23-57 and
10-29-57	Hearing on defendant's motion to quash information. Ordered motion granted. Order to be submitted. (Smith) (10-28-57)
11-18-57	Order dismissing information as to A & P Trucking Co., filed 11-14-57. (Smith)
12-11-57	Notice of appeal filed 12-9-57.
12-11-57	Copies mailed to Clerk of U.S. Supreme Court and August W. Heckman, Esq. [37-38]

39 Clerk's Certificate to foregoing transcript omitted in printing.

39a IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CR. No. 261-56

UNITED STATES OF AMERICA, *Plaintiff*,

v.

HOPLA TRUCKING COMPANY, *a partnership composed of* William Levine and Melvin Ulrich
Defendants

Information—Filed July 6, 1956

The United States Attorney charges:

COUNT 1

On or about the 11th day of October, 1955, in the District of New Jersey, HOPLA TRUCKING COMPANY, defendant, a partnership composed of William Levine and Melvin Ulrich, a common carrier by motor vehicle subject to the regulations prescribed by the Interstate Commerce Commission applying to shipments of explosives and other dangerous articles made by way of common carriers by motor vehicle (49 C.F.R. Parts 71 through 78), did knowingly transport by motor vehicle more than 2500 pounds, to wit, 2800 pounds gross weight of methanol, a flammable liquid, from Perth Amboy, New Jersey enroute to Bronx, New York, on public highways in the State of New Jersey without said vehicle being marked or placarded in the manner prescribed by law. (49 C.F.R. 77.823(a); 18 U.S. Code 835)

40 COUNT 2

On or about the 11th day of October, 1955, in the District of New Jersey, HOPLA TRUCKING COMPANY, defendant, a partnership composed of William Levine and Melvin Ulrich, a common carrier by motor vehicle subject to the regulations prescribed by the Interstate Commerce Commission applying to shipments of explosives and oth-

er dangerous articles made by way of common carriers by motor vehicle (49 C.F.R. Parts 71 through 78), did knowingly fail to require its driver, Bernard K. Terhane, who on said day operated a motor vehicle transporting 2800 pounds gross weight of methanol, a flammable liquid, from Perth Amboy, New Jersey enroute to Bronx, New York, on public highways within the State of New Jersey, to have in his possession a manifest, memorandum receipt, bill of lading, shipping order, shipping paper, or other memorandum showing the prescribed labels required for the outside containers of such flammable liquid. (49 C.F.R. 77.817; 18 U.S. Code 835).

HERMAN SCOTT,
United States Attorney.

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42 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Cr. 261-56

UNITED STATES OF AMERICA, *Plaintiff,*

v.

HOPLA TRUCKING COMPANY, *a partnership composed of* William Levine and Melvin Ulrich

Notice of Allocation—July 6, 1956

Pursuant to Rule 8 of the General Rules of this Court, I have allocated the above-entitled matter to *Newark, N.J.*

Please file pleadings and make all motions returnable there.

MICHAEL KELLER, JR., *Clerk*

By VERA A. ALEXANDER
Vera A. Alexander
Deputy Clerk

44 IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Cr. No. 261-56

UNITED STATES OF AMERICA, *Plaintiff*,

v.

HOPLA TRUCKING COMPANY, *a partnership composed of* William Levine and Melvin Ulrich, *Defendants.*

Appearance—Filed September 14, 1956

Sir:

You are hereby notified that I appear for HOPLA TRUCKING Co., all partners, the defendant in the above-entitled action.

AUGUST W. HECKMAN,
August W. Heckman
Attorney for defendant

880 Bergen Ave., Jersey City, N.J.
Jo. Sq. 2-1113

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46 IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

Cr. 261-56—PLEADING

UNITED STATES OF AMERICA, *Plaintiff*,

v.

HOPLA TRUCKING COMPANY, *a partnership composed of* William Levine and Melvin Ulrich, *Defendants.*

Before The Honorable THOMAS F. MEANEY, *U.S.D.J.*

Appearances:

FREDERIC C. RITGER, Assistant U. S. Attorney.
AUGUST W. HECKMAN and MORTON E. KIEL [New York] for defendant.

Arraignment and Plea—September 14, 1956

THE COURT: Mr. Heckman, have you been served with a copy of the information?

IN UNITED STATES DISTRICT COURT

Docket entries

Dr. 261

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	
J.S. 3 HOPLA TRUCKING COMPANY	
a partnership composed of	
William Levine and Melvin Ulrich	
	For Defendant:
	August W. Heckman, Esq.,
	880 Bergen Ave., Jersey City
Counts - 2	

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED		DISBURSED
Fine,							
Clerk,							
Marshal,							
Attorney,							
Commissioner's Court,							
Witnesses,							
					CLERK'S FEES		

Counts - 2

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED		DISBURSED
Fine,							
Clerk,							
Marshal,							
Attorney,							
Commissioner's Court,							
Witnesses,							

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF		CLERK'S FEES DEFENDANT	
	Title 18, USC Sec. 835				
7-6-56	Criminal Information for failure to mark or placard motor				
	vehicle used to transport dangerous poisons, filed				
7-6-56	Notice of allocation, filed (Newark)				
9-17-56	Notice of Appearance filed 9-14-56.				
9-17-56	Plea - Not Guilty. (Meaney) (9-14-56)				
9-18-56	Transcript of plea filed 9-14-56.				
9-10-57	Defendant's notice of motion to quash information returnable 9-23-57				
	and acknowledgment of service filed 9-9-57. (No brief)				
10-29-57	Hearing on defendant's motion to quash information. Ordered				
	motion granted. Order to be submitted. (Smith) (10-28-57)				
11-15-57	Order dismissing Criminal Information filed 11-14-57. (Smith)				
12-11-57	Notice of Appeal filed 12-9-57.				
12-11-57	Copies mailed to Clerk of U.S. Supreme Court and August W. Heckman, Esq.				[56]

MR. HECKMAN: Yes, we have, if your Honor please.

THE COURT: You are familiar with it.

MR. HECKMAN: Not guilty. And in this case I am also associated with Mr. Kiel, of the New York Bar.

THE COURT: Well, we will extend the permission to make a sort of blanket coverage for these two cases.

MR. HECKMAN: Thank you.

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48 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

No. 261-56

UNITED STATES OF AMERICA, *Plaintiff*,

v.

HOPLA TRUCKING COMPANY, *a partnership composed of* William Levine and Melvin Ulrich, *Defendants*.

Notice of Motion to Quash Information—Filed September 9, 1957

To The United States Attorney:

TAKE NOTICE that on Monday, May 13, 1957, I shall move before the Honorable Richard Hartshorne or such Judge as may be hearing motions on that day, for an Order quashing the Information heretofore filed against the defendants herein on the following grounds:

1. The action of the United States in instituting suit against the defendants is contrary to law (18 U.S.C. 835) and the decision of the United States District Court for the Southern District of New York in United States of America vs. American Freightways Co., a partnership composed of Allan J. Resler and Norman Forman reported in 352 U.S. 864, 77 S. Ct. 95, also 77 S. Ct. 588.

2. For such other good and divers reasons as will be presented and argued on the return day of the motion.

AUGUST W. HECKMAN,
August W. Heckman
Attorney for Defendants.

50 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Criminal No. 261-56

UNITED STATES OF AMERICA, *Plaintiff*,

v.

HOPLA TRUCKING COMPANY, *a partnership composed of* William Levine and Melvin Ulrich, *Defendants*.

Order Dismissing Information—November 13, 1957

This matter having come before the Court upon motion by the defendant, Kopla Trucking Company, a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the Kopla Trucking Company, a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under the section set forth, it is on this 13th day of November, 1957.

Ordered that the criminal information filed with the Clerk of this Court on July 6, 1956, be and the same is hereby dismissed.

WILLIAM F. SMITH
United States District Judge.

We consent to the form of the foregoing Order.

AUGUST W. HECKMAN,
August W. Heckman,
Attorney for Defendant.

ANTHONY J. CIOFFI,
Anthony J. Cioffi
(Of Counsel)

52 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Criminal No. 261-56

UNITED STATES OF AMERICA, *Plaintiff*,

v.

HOPLA TRUCKING COMPANY, *a partnership composed of* William Levine and Melvin Ulrich, *Defendants.*

Notice of Appeal to the Supreme Court of the United States—Filed December 9, 1957.

I. Notice is hereby given that the United States hereby appeals to the Supreme Court of the United States from the order entered November 14, 1957, dismissing the information which charged violations of 18 U.S.C. 635. This appeal is taken pursuant to 18 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Transcript of docket entries
2. Information
3. Motion to dismiss the information
4. Order dismissing the information
5. Notice of appeal

53 III. The following question is presented by this appeal:

Whether a partnership as a legal entity is subject to criminal liability under 18 U.S.C. 835.

CHESTER A. WEIDENBURNER,
Chester A. Weidenburner,
United States Attorney,
District of New Jersey

57 Clerk's Certificate to foregoing transcript omitted in printing.

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58 SUPREME COURT OF THE UNITED STATES

No. 754, October Term, 1957

Order Noting Probable Jurisdiction—March 31, 1958

Appeal from the United States District Court for the District of New Jersey.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

☆U. S. GOVERNMENT PRINTING OFFICE 1958—463479/P.O. 1383

Nos. —— [redacted] 32

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY

UNITED STATES OF AMERICA, APPELLANT

v.

HOPLA TRUCKING COMPANY

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

JURISDICTIONAL STATEMENT

J. LEE RANKIN,
Solicitor General,
RUFUS D. McLEAN,
Acting Assistant Attorney General,
BEATRICE ROSENBERG,
Attorney,
Department of Justice, Washington 25, D. C.

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453500—58

In the Supreme Court of the United States

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No. —

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

HOPLA TRUCKING COMPANY

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The district court wrote no opinions. The orders dismissing the informations are set forth in the Appendix, *infra*, pp. 8–10.

JURISDICTION

On November 14, 1957, the district court dismissed the information in each of the above cases on the ground that, under the statutes involved, a partner-

ship, as an entity, is not subject to criminal liability. Notices of appeal to this Court were filed in the district court on December 9, 1957. The jurisdiction of this Court to review on direct appeal judgments dismissing the informations, based on a construction of the statutes on which the informations were founded, is conferred by 18 U. S. C. 3731.

STATUTES INVOLVED

The Interstate Commerce Act, Part II, 49 Stat. 543, as amended, provides in pertinent part:

> Section 222 (a) [49 U. S. C. 322 (a)]:
>
> Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not more than $100 for the first offense and not more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.
>
> Section 203 (a) [49 U. S. C. 303 (a)]:
>
> As used in this part—
>
> (1) the term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

18 U. S. C. 835 provides in pertinent part:

> The Interstate Commerce Commission shall formulate regulations for the safe transportation within the limits of the jurisdiction of the United States of explosives and other dan-

gerous articles, * * * which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land * * *.

* * * * *

Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both * * *.

1 U. S. C. 1 provides in pertinent part:

In determining the meaning of any Act of Congress, unless the context indicates otherwise—

* * * * *

the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

* * * * *

QUESTION PRESENTED

Whether a partnership, as a legal entity, is subject to criminal liability under 18 U. S. C. 835 and 49 U. S. C. 322 (a).

STATEMENT

The information against the A & P Trucking Company, a partnership, charged the partnership, in count (1), with an offense under 18 U. S. C. 835 by the transportation of dangerous articles in a manner violating regulations of the Interstate Commerce Commission; in count (2), with a violation of 49 U. S. C. 322 (a) and a regulation of the Commission, in that the company permitted the operator to drive without having been physically examined and certified as meeting minimum physical requirements; in count (3), with a violation of 49 U. S. C. 322 (a) and a regulation of the Commission by failing to equip a truck

with a fire extinguisher; and in counts (4)–(35), with various operations as a common carrier without a certificate of convenience and necessity, in violation of 49 U. S. C. 306 (a) and 322 (a).[1]

The two-count information against the Hopla Trucking Company, a partnership, charged the partnership, as an entity, with offenses under 18 U. S. C. 835 in that it transported flammable liquid by motor vehicle in a manner violating I. C. C. regulations.

The district court dismissed each of the informations on the ground that the partnership entity was not subject to criminal liability.

THE QUESTION IS SUBSTANTIAL

The basic question presented—whether a partnership may be subject to criminal liability for violations requiring an element of *scienter*—was before this Court in *United States* v. *American Freightways,* 352 U. S. 1020. In that case, an equally divided Court affirmed a district court judgment which had dismissed an information under 18 U. S. C. 835 (*supra,* p. 2), on the ground that a partnership, as such, is not subject to criminal liability. As to violations under 18 U. S. C. 835, the issue here, as it was in *American Freightways,* is whether Congress, in using the phrase "[w]hoever knowingly violates," could and did cover partnerships.[2] As to those counts in the information against the A & P Trucking Company

[1] The first count, charging a violation of 18 U. S. C. 835, also charged the driver of the truck as an aider and abettor.

[2] A definition of "whoever" is not contained in 18 U. S. C. 835, but appears in 1 U. S. C. 1 (*supra,* p. 3). That definition embraces partnerships.

which charge violations punishable under Section 222 (a) of Part II of the Interstate Commerce Act (*supra*, p. 2), the issue of partnership liability is even more sharply drawn. The prohibitions of Section 222 (a) run against "any person," and the definition section of Part II, Section 203 (a) (*supra*, p. 2), specifically defines person, for the purposes of Part II, as including a partnership. In substance, therefore, the decision below holds that it is *beyond the power* of Congress to make a partnership entity criminally liable for violations involving *scienter*.

We believe, on the contrary, that a partnership, like a corporation, may be charged by the legislature with responsibility for the knowing acts of its agents, committed in the course of the business, and that the partnership treasury (again, like that of the corporation) may be subjected to a fine for the commission of commercial or so-called "public welfare" offenses.

This Court, even without the benefit of provisions akin to 1 U. S. C. 1 and Section 203 (a) (1) of the Interstate Commerce Act, held, in *United States* v. *Adams Express Co.*, 229 U. S. 381, that Section 10 of the Interstate Commerce Act, which made express companies guilty of a misdemeanor for violations of the Act, applied to an express company organized as a joint stock association, rather than as a corporation. The Court noted that, since it was not doubted that the company was subject to the regulations, "it is reasonable to suppose that the same words are intended to impose upon them the penalty inflicted on common carriers in case those duties are not performed" (229 U. S. at 389). Here, also, the regula-

tions (violations of which are punishable either under 18 U. S. C. 835 or 49 U. S. C. 322 (a)) are binding upon all common carriers, including those organized as partnerships. In the *Adams Express Co.* case, the court entertained no doubt of the power of Congress to "charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name" (229 U. S. at 390). That is what Congress has done by the statutes here involved.

Since many carriers, particularly carriers by motor, operate in partnership form, it is important to the enforcement of the I. C. C. regulatory system that the questions here presented be resolved by the full Court. Moreover, the holding that, even where Congress has expressly defined person to include a partnership, the entity may not be subject to criminal liability, is important in many other regulatory areas.[3]

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[3] There are scores of cases—although they are largely unreported—in which partnerships, as such, have been fined for violation of federal regulatory acts. In the Reply Brief for the United States filed in the *American Freightways* case (October Term, 1956, No. 265), we referred the Court to a considerable number of such cases, arising under the following statutes: Agricultural Marketing Agreement Act; Part II of the Interstate Commerce Act; Federal Food, Drug, and Cosmetic Act; Meat Inspection Act; Federal Seed Act; Animal Quarantine laws; Connally "Hot Oil" Act. We also pointed out that we knew of no case, prior to the district court's *American Freightways* decision, in which a criminal proceeding under a federal regulatory statute, brought against a partnership, failed because the partnership was not deemed suable.

CONCLUSION

It is respectfully submitted that the Court should note jurisdiction of these appeals.

J. LEE RANKIN,
Solicitor General.
RUFUS D. MCLEAN,
Acting Assistant Attorney General.
BEATRICE ROSENBERG,
Attorney.

JANUARY 1958.

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Criminal No. 252–56
UNITED STATES OF AMERICA
v.
A & P TRUCKING CO., A PARTNERSHIP COMPOSED OF ALEX SCHUB, ALDO IAFRATE, AND ARTHUR CLOUGH, AND SOL LIEBMAN, DEFENDANTS

This matter having come before the Court upon motion by the defendant A & P Trucking Co., a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant, and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the A & P Trucking Co., a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under the section set forth, it is on this 13th day of November, 1957,

ORDERED that the criminal information filed with the Clerk of this Court on July 5, 1956, be and the same is hereby dismissed.

/s/ WILLIAM F. SMITH
United States District Judge.

We consent to the form of the foregoing Order.

/s/ AUGUST W. HECKMAN
August W. Heckman
Attorney for Defendant.

/s/ ANTHONY J. CIOFFI
Anthony J. Cioffi
(*Of Counsel*).

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Criminal No. 261–56
UNITED STATES OF AMERICA
v.
HOPLA TRUCKING COMPANY, A PARTNERSHIP COMPOSED OF WILLIAM LEVINE AND MELVIN ULRICH

This matter having come before the Court upon motion by the defendant, Hopla Trucking Company, a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant, and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the Hopla Trucking Company, a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under

the section set forth, it is on this 13th day of November, 1957,

ORDERED that the criminal information filed with the Clerk of this Court on July 6, 1956, be and the same is hereby dismissed.

/s/ WILLIAM F. SMITH
United States District Judge.

We consent to the form of the foregoing Order.

/s/ AUGUST W. HECKMAN
August W. Heckman
Attorney for Defendant.

/s/ ANTHONY J. CIOFFI
Anthony J. Cioffi
(*Of Counsel*).

U. S. GOVERNMENT PRINTING OFFICE: 1958

No. 32

In the Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY AND HOFLA TRUCKING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
RALPH S. SPRITZER,
Assistant to the Solicitor General,
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys,
Department of Justice,
Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 32

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY AND HOPLA TRUCKING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court wrote no opinions. The orders dismissing the informations are set forth at R. 19 and R. 27.

JURISDICTION

On November 13, 1957, the District Court dismissed the informations in these cases on the ground that, under the statutes involved, a partnership is not subject to criminal liability (R. 19, 27). Notices of appeal to this Court were filed in the District Court on December 9, 1957 (R. 20, 28), and probable jurisdiction was noted on March 31, 1958, 356 U. S. 917 (R. 31). The jurisdiction of this Court to review on direct appeal judg-

ments dismissing the informations, based on a construction of the statutes on which the informations were founded, is conferred by 18 U.S.C. 3731. *United States* v. *Borden Co.*, 308 U.S. 188, 193.

QUESTION PRESENTED

Whether a partnership, as a legal entity, is subject to criminal liability under the following statutes: (1) Section 222(a) of the Interstate Commerce Act (relating to violation of certification requirements and of I.C.C. motor carrier regulations); and (2) 18 U.S.C. 835 (relating to violation of regulations governing the safe transportation of explosives and other dangerous articles).

STATUTES INVOLVED

1. The Interstate Commerce Act, Part II (Motor Carrier Act of 1935, 49 Stat. 543, as amended), provides in pertinent part:

Section 222 (a) [49 U.S.C., Supp. V, 322 (a)]:

Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not less than $100 nor more than $500 for the first offense and not less than $200 nor more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

* * * * *

Section 203 (a) [49 U.S.C. 303 (a)]:

As used in this part——

(1) the term "person" means any individual, firm, copartnership, corporation, company, asso-

ciation, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

* * * * *

Section 206 (a) [49 U.S.C. 306 (a)]:

(1) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *

* * * * *

Section 207 (a) [49 U.S.C. 307 (a)]:

Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied; * * *

* * * * *

2. 18 U.S.C. 835 provides in pertinent part:

> The Interstate Commerce Commission shall formulate regulations for the safe transportation within the limits of the jurisdiction of the United States of explosives and other dangerous articles, * * * which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land * * *.
>
> * * * * *
>
> Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

3. 1 U.S.C. 1 provides in pertinent part:

> In determining the meaning of any Act of Congress, unless the context indicates otherwise——
>
> * * * * *
>
> the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;
>
> * * * * *

STATEMENT

On July 5, 1956, an information was filed against the A & P Trucking Company, a partnership, charging

the partnership, in count 1, with an offense under 18 U.S.C. 835, *supra*, by the transportation of dangerous articles in a manner violating regulations of the Interstate Commerce Commission (49 C.F.R. 77.823(a)); in count 2, with a violation of Section 222 (a) of the Motor Carrier Act of 1935, *supra*, in that the company permitted the operator to drive without having been physically examined and certified in conformity with the Commission's safety regulations (49 C.F.R. 191.8); in count 3, with a violation of Section 222 (a) by failing to equip a truck with a fire extinguisher as required by regulation (49 C.F.R. 193.95(a)); and in counts 4-35, with violations of Section 222(a) by engaging in various operations as a common carrier without the certificate of convenience and necessity required by Section 206 (a), *supra* (R. 1-15).

The two-count information against Hopla Trucking Company, a partnership, filed July 6, 1956, charged the partnership with offenses under 18 U.S.C. 835, in that it transported flammable liquid by motor vehicle in a manner violating Interstate Commerce Commission regulations (49 C.F.R. 77.823 (a) and 77.817; R. 23-24).

The District Court dismissed each of the informations on the ground that the partnership, as such, was not subject to criminal liability (R. 19, 27).

SUMMARY OF ARGUMENT

The District Court dismissed the indictments against both appellees on the ground that a partnership might not be sued as such. In doing so, the court drew no distinction between the offenses charged under Section 222(a) of the Interstate Commerce Act (*supra*, p. 2) and those charged under 18 U. S. C. 835 (*supra*, p. 4). And it failed to indicate whether its action was predicated upon (1) a view that the statutory lan-

guage was inadequate to embrace partnerships, or (2) a view that Congress lacked the requisite power or purpose to impose liability upon a partnership entity? We urge that the statutory language does cover partnerships, and that Congress had the power and the purpose to achieve this result.

I

A. Section 222(a) is the comprehensive misdemeanor section found in Part II (motor carriers) of the Interstate Commerce Act. It deals with infractions of "any provision of this part, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, etc.," and provides for punishment, by means of a fine, of "any person" who knowingly and wilfully violates. It is not necessary to rely upon the anomaly which would result if the section could be invoked against motor carriers doing business in corporate form (as is well settled), but not against those organized (as many are) in partnership form. The fact is that Part II contains its own definition of the term "person": "'person' means any individual, firm, copartnership, corporation, company, association, or joint-stock association" (Section 203 (a), *supra*, pp. 2-3). A plainer and more explicit definition could hardly be asked.

B. 18 U. S. C. 835 is a long-standing provision of the criminal code, which commands that "whoever knowingly violates" I.C.C. regulations governing the safe transportation of explosives shall be subject to fine or imprisonment. The statute provides in terms that the regulations "shall be binding upon *all* common carriers engaged in interstate or foreign commerce" (emphasis

added). They would hardly be binding upon all carriers if not enforceable against all.

Moreover, 18 U. S. C. 835 must be read in conjunction with 1 U. S. C. 1, which states that the term "whoever," when used in an act of Congress, shall include, "unless the context indicates otherwise, * * * corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." Far from indicating otherwise, the context of 18 U. S. C. 835 manifests a design to cover *all* carriers.

The fact that 18 U. S. C. 835 provides for fine or imprisonment presents no obstacle. Although the alternative of imprisonment obviously cannot be applied in a prosecution against a business entity (whether it be a corporation, a joint stock association, or a partnership), the provision for a fine is available. See *United States* v. *Union Supply Company,* 215 U. S. 50, holding that a corporation might be fined for knowing violation of a statutory requirement (record-keeping provisions of the Oleomargarine Act) although the prescribed penalty was a fine *and* imprisonment. As this Court long ago held in a prosecution brought under the Interstate Commerce Act against a rail carrier doing business as an association, there is no reason why Congress cannot "charge the partnership assets with a liability and * * * personify the company so far as to collect a fine by a proceeding against it by the company name," *United States* v. *Adams Express Company,* 229 U. S. 381, 390.

II

A. It is, to be sure, the common law rule that a partnership has no status apart from its individual mem-

bers. But it is equally clear, as the *Adams Express* case and many other decisions, both federal and state, attest, that the legislature may, for particular purposes, treat a partnership as an entity. Numerous regulatory statutes, including those here involved, place partnerships in the class of persons subject to the statutory requirements and sanctions, and innumerable prosecutions have been brought against partnerships without question being raised as to their amenability to penalty.

The essence of regulatory measures of this kind is to deter commercial or business conduct which departs from an established norm deemed necessary for the protection of the public. When a partnership engages in a business affected with the public interest—in this case, a licensed business—there is certainly no sound reason why it should not be answerable to the prescribed standards in precisely the same way as a corporation engaged in that same business.

B. Under the regulatory statutes here involved, *scienter* is an element of the offense. There is no reason, however, why the "knowledge" of the partnership may not be established in the same way as the "knowledge" of a corporation in similar circumstances—by proving the knowledge of the company's authorized agents or employees.

We do not deal here with classic common law crimes which rest upon deeply ingrained concepts of personal blameworthiness and moral wrong, crimes which depend for their commission upon a "concurrence of an evil-meaning mind with an evil-doing hand," *Morissette* v. *United States,* 324 U. S. 246, 251. These are not statutes which seek to cure or change the mental processes of a criminal, but laws which seek to deter business enterprises from operating loosely or care-

lessly in the conduct of a business affecting the public. They aim, as do the implementing regulations, at enforcement of carrier responsibilities. The use of the words "wilfully" and "knowingly" reflects only a purpose to excuse the unknowing or unavoidable violation. Those words do not import that a penalty may be imposed only if the defendant is shown to have had an evil or corrupt motive.

Equality of treatment amongst all common carriers is essential to proper control of interstate carriage. The public and the motor carrier industry require protection from unsafe and unlicensed practices irrespective of whether the derelictions are those of corporations, partnerships, associations, or sole proprietorships. It is no answer that the Government could seek to prosecute the responsible individual employee or agent. It may well be difficult or impossible, particularly in the case of a large carrier organization, to isolate the responsible individuals, even though it be clear that there has been a general and wanton disregard of regulatory requirements. The important consideration, moreover, is that sound enforcement depends primarily upon the capacity to induce the company to take prophylactic measures. Training and supervision, which must be provided from above, are unquestionably the key to compliance and to safety. As Judge Charles Clark stated of a prosecution under another regulatory statute, the "purpose of the Act is a deterrent one; and to deny the possibility of corporate [company] responsibility for the acts of minor employees is to immunize the offender who really benefits and open wide the door for evasion," *United States* v. *George F. Fish, Inc.*, 154 F. 2d 798, 801 (C. A. 2), certiorari denied, 328 U. S. 869.

Congress, we submit, had the power and the purpose to treat all carriers alike.

ARGUMENT

In dismissing the informations on the ground that a partnership, as an entity, was not amenable to the charges made, the District Court drew no distinction between offenses under Section 222 (a) of Part II of the Interstate Commerce Act (Motor Carrier Act of 1935) and those under 18 U.S.C. 835. Nor did it say whether it was holding (1) that the statutes involved were to be construed as not undertaking to subject a partnership entity to criminal liability, or (2) that Congress was without power to impose such liability. We argue that Congress, in both statutes, has subjected partnerships (as such) to criminal liability. And, in our view, there is nothing to prevent Congress from imposing criminal liability on a business entity—whether it be a corporation, partnership or association—for commercial offenses which arise from the conduct of the business and fall within the regulatory powers of the federal government. In such cases, the company's "knowledge" may be proved by establishing the knowledge of its authorized agents or employees.

I

Congress Has Provided that Partnerships Engaged as Motor Carriers in Interstate Commerce Be Subject to Criminal Liability under Section 222 (a) of the Interstate Commerce Act and under 18 U. S. C. 835.

A. *Section 222 (a):*

On the issue of statutory construction, there is, we think, hardly room for an argument that Section 222 (a)

(*supra*, p. 2) does not ~~not~~ subject partnership entities to criminal liability. The prohibitions of the Section run against "[a]ny person", and the definitions section of Part II of the Interstate Commerce Act (Section 203(a), *supra*, pp. 2-3) specifically defines "person" to mean "any individual, firm, copartnership, corporation, company, association, or joint-stock association; * * *."[1] A violation of this statute, or the regulations promulgated thereunder, constitutes a misdemeanor, and the only penalty which may be imposed is a small fine (not less than $100 for the first offense and a maximum of $500 for any subsequent offense), which obviously can be assessed against the treasury of the business. The decision of the District Court on this aspect of the case can therefore be reasonably interpreted only as a holding that Congress is without power to subject a partnership to criminal liability for knowing violations, even though the sole penalty is a fine. See Point II, *infra*, pp. 17 *et seq.*

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[1] Many other federal regulatory statutes similarly define the word "person" to cover, *inter alia*, partnerships. See, for example, Civil Aeronautics Act, 52 Stat. 973, 979, 49 U.S.C. 401 (27); Communications Act of 1934, 48 Stat. 1064, 1066, 47 U.S.C. 153(h), (i); Shipping Act, 39 Stat. 728, as amended, 46 U.S.C. 801, 812, 814, 815; Tariff Act of 1930, 46 Stat. 590, 708, 19 U.S.C. 1401 (d); Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, *et seq.*, 21 U.S.C. 301, *et seq.*; United States Grain Standards Act, 39 Stat. 482, 7 U.S.C. 71, 72, *et seq.*; Packers & Stockyards Act of 1921, 42 Stat. 159, 7 U.S.C. 181, 182 (l); Perishable Agricultural Commodities Act, 48 Stat. 123, 124, 7 U.S.C. 581, 589 (l); Agricultural Marketing Agreement Act, 48 Stat. 31, as amended, 7 U.S.C. 601, 608 a (4), (9); Animal Quarantine Laws, 32 Stat. 791-792, 21 U.S.C. 111, 122; Federal Seed Act, 53 Stat. 1275, 7 U.S.C. 1561 (2); Meat Inspection Act, 34 Stat. 1260, 21 U.S.C. 71, 88; Connally "Hot Oil" Act, 49 Stat. 30, 15 U.S.C. 715 (a) (4), 715 (e); Wool Products Labeling Act, 54 Stat. 1128, 15 U.S.C. 68, 68h; Fur Products Labeling Act, 65 Stat. 175, 15 U.S.C. 69, 69i(a).

B. *18 U.S.C. 835:*

This statute (*supra*, p. 4), which has predecessors dating back to 1866 (14 Stat. 81), was before the Court in *United States* v. *American Freightways Co.*, 352 U.S. 1020, in which an equally divided Court affirmed a district court's order similarly dismissing an information returned against a partnership. We argued in that case, and we again urge here, that the language of 18 U.S.C. 835, read in conjunction with 1 U.S.C. 1 (*supra*, p. 4), is sufficiently broad to subject a partnership to criminal liability.

18 U.S.C. 835 directs that "[w]hoever knowingly violates" the regulations promulgated thereunder shall be subject to criminal liability. 1 U.S.C. 1 specifically commands that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise * * * the words 'person' and 'whoever' include * * * partnerships * * *." It was in the same codification which made Title 18 positive law (62 Stat. 683) that Congress amended 1 U.S.C. 1 by adding the word "whoever" and broadly defining "person" and "whoever" to include "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals" (62 Stat. 859). Thus, there is no question that Congress proposed to deal with the criminal liability of every form of business organization—partnerships no less than corporations.[2]

In *United States* v. *United Mine Workers of America*, 330 U. S. 258, 275, this Court was called upon

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[2] Cf. the Agricultural Marketing Agreement Act, 7 U.S.C. 601, *et seq.*, which defines "person" to include "an individual, partnership, corporation, association and *any other business unit*" (7 U.S.C. 608 (a) (9) (emphasis added)). *Scienter* is an element of offenses under that Act. See 7 U.S.C. 608 a (4), 620.

to construe Section 13 of the Norris-LaGuardia Act, 47 Stat. 73, which did not define "person." In considering whether the Act would apply to the sovereign, the Court looked to 1 U. S. C. 1 to determine the meaning of the term "person," and noted that, by force of that provision, the term did cover partnerships and corporations. See, also, *United States* v. *Union Supply Company*, 215 U. S. 50, 54-55 (construing "person" and "wholesale dealers" as used in the Oleomargarine Act of 1902, 32 Stat. 193, to include a corporation, when read in light of 1 U. S. C. 1); *Falk* v. *Curtis Pub. Co.*, 98 Fed. 989, 990 (C.C. E.D. Pa.) (so construing "person" in R. S. 4965 (copyright infringement)); *United States* v. *New York Herald Co.*, 159 Fed. 296, 297 (C.C. S.D. N.Y.) (so construing "person" in R. S. 3893 (obscene matter)); *Alamo Fence Company of Houston* v. *United States*, 240 F. 2d 179, 181 (C. A. 5) (applying 1 U. S. C. 1 and holding "whoever" in 18 U. S. C. 1010, and "persons" in 18 U. S. C. 371, to include corporations).

Moreover, 18 U. S. C. 835 has, itself, been applied to corporations without any question being raised as to its applicability. See, *e. g.*, *United States* v. *Boyce Motor Lines*, 342 U. S. 337; *West Coast Fast Freight* v. *United States*, 205 F. 2d 249 (C. A. 9); *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393 (C. A. 1). If the prohibitions against unsafe transportation of explosives and the accompanying penalties are not deemed restricted to natural persons—if, in other words, they do apply to corporate entities—there is no logic in holding them inapplicable to other types of business entities, such as partnerships and joint stock associations.

There is nothing in the context of 18 U. S. C. 835 to bring it within the exception of 1 U. S. C. 1.[3] On the contrary, the language of 18 U. S. C. 835 so clearly suggests a Congressional purpose to achieve full coverage that, even without the explicit command of 1 U. S. C. 1, the normal reading of the statute would warrant its interpretation as subjecting partnerships to criminal liability. Thus, the statute makes regulations promulgated under the Act "binding upon *all* common carriers" (emphasis added). The penalties for breach of duty (which fall upon "[w]hoever knowingly violates") cannot fairly be deemed any less extensive in their coverage.

There is no practical difficulty in personifying the partnership for the purpose of imposing criminal liability under 18 U. S. C. 835. The proscribed offense is a misdemeanor and, since the penalty is either a fine or imprisonment, punishment may be validly imposed on the firm by means of a fine on its assets.[4] In *United States* v. *Union Supply Company*, 215 U. S. 50, a corporation was indicted under the Oleomargarine Act of 1902 for "wilfully" violating the Act in failing to keep required records, an offense carrying the prescribed punishment of a fine *plus* imprisonment. In holding for a unanimous Court that a corporation was subject

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[3] "* * * *unless the context indicates otherwise* * * * the words 'person' and 'whoever' include", etc. (emphasis added).

[4] The punishment under former provisions was a $2,000 fine or 18 months' imprisonment, or both (18 U.S.C. (1940 ed.) 383, 385). The present law provides a maximum fine of $1,000 or one year imprisonment, or both, for a violation of the regulations not resulting in death or bodily injury. As the reviser notes: "The former provision * * * with the * * * requirement for prosecution by indictment and the stigma of commission of a felony upon conviction, appeared out of all proportion to the gravity of the offense."

to the provisions of the Act and amenable to punishment by imposition of a fine, Mr. Justice Holmes observed (215 U. S. at 55):

> * * * if we free our minds from the notion that criminal statutes must be construed by some artificial and conventional rule, the natural inference, when a statute prescribes two independent penalties, is that it means to inflict them so far as it can, and that if one of them is impossible, it does not mean on that account to let the defendant escape.

To hold that the carriers in the instant case are subject to liability for their breaches of the statutory requirements would hardly produce a novel result. As already noted (p. 11, note 1, *supra*), numerous regulatory statutes explicitly personify the partnership and impose criminal liability on the business entity. See, also, discussion, *infra*, pp. 23-26.

The result, moreover, is one long since sanctioned by this Court. *United States* v. *Adams Express Co.*, 229 U. S. 381. In *Adams Express*, the defendant, a joint stock association, was indicted for departing from its filed schedule of rates, in violation of the Interstate Commerce Act. Section 10 of that Act (the counterpart of Section 222(a) of the Motor Carrier Act) made any common carrier "willfully" violating the Act guilty of a misdemeanor (36 Stat. 539, 549). The precise issue was whether a provision making "common carriers" (defined to include "express companies") guilty of a misdemeanor for violations of the Act could be applied to a company organized as a joint stock association. In a unanimous opinion upholding the indictment, the

Court, speaking through Mr. Justice Holmes, held that the term "common carriers" was to be given its "natural" meaning and coverage, and not to be restricted to carriers organized in corporate form (pp. 389-390). The opinion states (p. 389):

> * * * no one, certainly not the defendant, seems to have doubted that the statute now imposes upon them the duty to file schedules of rates. *American Express Co.* v. *United States,* 212 U. S. 522, 531. (The American Express Company is a joint stock association.) But if it imposes upon them the duties under the words common carrier as interpreted, it is reasonable to suppose that the same words are intended to impose upon them the penalty inflicted on common carriers in case those duties are not performed.

As to a possible Constitutional prohibition, Mr. Justice Holmes further stated (p. 390):

> The power of Congress hardly is denied. The constitutionality of the statute as against corporations is established, *New York Central & Hudson River R. R. Co.* v. *United States,* 212 U. S. 481, 492, and no reason is suggested why Congress has not equal power *to charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name.* That is what we believe that Congress intended to do. [Emphasis added.]

In sum, the regulations promulgated under 18 U. S. C. 835 are in terms binding upon *all* common carriers, and all carriers (whether corporations, joint stock associations or partnerships) must be deemed

subject to the penalties provided in the same statute for violation of these regulations. Congress has exercised its "power to charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name."

II

Congress Had the Power and the Purpose to Subject the Partnership Entity To Criminal Liability

If we are correct in our view that Congress has adopted language sufficiently comprehensive to subject the partnership entity to criminal liability, the question remains whether Congress had the power and the purpose to do so. We believe, as the *Adams Express* case, *supra*, holds, that Congress does have this power, just as it has the power to treat a corporation as an entity for purposes of criminal liability. When a partnership is treated as an entity, its position is much the same as that of a corporation. It is the business enterprise—concretely, the company treasury—which is subjected to liability. In both instances, the "knowledge" of the entity can be proved in the same way—by proving the knowledge of authorized agents or employees. And to hold that there is liability in both instances is to carry out the statutory purposes.

A. *The common law concept of a partnership does not prevent statutory personification of a partnership for the purposes of criminal liability.*

1. There is nothing in the inherent nature of a partnership which precludes a legislature from treating it as an entity and imposing criminal liability against it in that form. To be sure, under usual common law pre-

cepts a partnership is considered an aggregate of individuals acting in concert, having neither status nor personality independent of its individual members. Mechem, *Elements of the Law of Partnership*, § 2, p. 3 (see n. 4); § 6, pp. 8-11 (2d ed., 1920).[5] Under this theory, it may not sue or be sued in the firm name. Mechem, *id.*, § 123, p. 109. On the same basis, it has also been presumed that a partnership is not to be subjected to criminal responsibility in the absence of provision by the legislature. *People* v. *Schomig*, 74 Cal. App. 109; *People* v. *Maljan*, 34 Cal. App. 384. However, it has been consistently recognized that, whatever may be the rule in the absence of statute,[6] it is within the province of the legislature to treat a partnership as an entity discrete from its individual members and to accord it a separate status.

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[5] The Uniform Partnership Act (7 U.L.A. § 6) defines the relationship as "an association of two or more persons to carry on as co-owners a business for profit." But, even under common law, such devices as representative suits in equity, trust arrangements, waiver and estoppel modify the rigors of the rule. See Dodd, *Dogma and Practice in the Law of Associations*, 42 Harv. L. Rev. 977 (1929). Cf. Note, *The Partnership as a Legal Entity*, 41 Col. L. Rev. 698 (1941), where it is pointed out that the "entity" theory has been relied upon in many situations in New York, a state which follows the common law rule.

[6] There is a strong body of law embracing the civil law concept that a partnership—even absent statutory directive—is a legal entity. See Crane, *The Law of Partnership* (1938), § 3. The entity theory of partnership appears to be followed in Michigan (*Scott* v. *Alsar Company*, 336 Mich. 532, 538; *Employment Security Commission* v. *Crane*, 334 Mich. 411, 416; *Lobato* v. *Paulino*, 304 Mich. 668, 675-676); in Iowa (*Rubio Savings Bank of Brighton* v. *Acme Farm Products Co., et al.*, a partnership, 240 Ia. 547, 556); in Nebraska (*In re Estate of Zents*, 148 Neb. 104, 114; *State* v. *Pielsticker*, 118 Neb. 419, 421-422); to some extent, in Vermont (*Brooks* v. *Ulanet*, 116 Vt. 49); and in Louisiana (*E. B. Hayes Machinery Co.* v. *Eastham*, 147 La. 347).

In federal and state law, a partnership is frequently personified for various purposes. For example, Rule 17(b) of the Federal Rules of Civil Procedure gives a partnership status to sue or be sued in the firm name.[7] Section 18 of the California Labor Code (1955) defines person to include "any person, association, organization, partnership, business trust, or corporation". The Public Health Law of New York (44 McKinney's Consolidated Laws, 1954), dealing, *inter alia*, with Water Pollution Control (§ 1202), Air Pollution Control (§ 1267, 1958 Supp.), and Narcotic Control (§ 3301 (2)), includes partnership within its general definition of persons. In construing the Bankruptcy Act of 1898, 30 Stat. 544, as amended, this Court, in *Liberty Nat. Bank* v. *Bear*, 276 U.S. 215, 220-221, noted "* * * that a partnership may be adjudged a bankrupt as a separate entity without reference to the bankruptcy of the partners as individuals." See, also, *Meek* v. *Centre County Banking Co.*, 268 U.S. 426, 431; *In re Ginsberg*, 219 F. 2d 472, 473 (C.A. 3).[8]

Associations, which possess many of the characteristics of partnerships, have also been treated as entities both for purposes of civil responsibility (*United Mine Workers* v. *Coronado Co.*, 259 U.S. 344, holding a

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[7] Rule 17 (b) provides in pertinent part:

"* * * In all other cases capacity to sue or be sued shall be determined by the law of the state in which the District Court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States * * *."

[8] The present Bankruptcy Act (Section 5) retains the provision that a partnership may be adjudged a bankrupt separately from its general partners (52 Stat. 840, 845, as amended, 11 U.S.C. 23.)

labor union amenable to civil suit under the antitrust laws) and criminal liability (*United States* v. *Adams Express Co.*, 229 U.S. 381, discussed *supra*, pp. 15-17). And in *Brown* v. *United States*, 276 U.S. 134, where the issue was whether a subpoena could validly be directed to an association in the course of a grand jury investigation of possible violations of the Sherman Act, this Court pointed out that Congress may authorize proceedings against an association (pp. 141-142):

> The general rule is that in the absence of statute an unincorporated association is not a legal entity which may be sued in the name of the association. Many of the states have adopted statutes expressly providing that such associations may be sued. But an express provision is not indispensable. Such a suit may be maintained in virtue of a necessary implication arising from statutory provisions although the statute does not in terms so provide. Here, such an implication arises from the provisions of the Sherman Anti-Trust Act, c. 647, 26 Stat. 209. The act denounces as illegal every contract, combination and conspiracy in restraint of interstate and foreign trade, and provides that every person who shall make any such contract or engage in any such combination or conspiracy shall be guilty of a misdemeanor. Section 8 of the act provides that the word person shall be deemed to include corporations and *associations* existing under or authorized by the laws of the United States, of any territory, state or foreign country. That the Alliance was an association within the meaning of this section and, therefore, subject to the provisions of the act is clear. The provisions

of the act creating criminal and civil liability against such an association necessarily carry the implication that it may be proceeded against by its common name to enforce the liability. Consequently, for a violation of the Anti-Trust Act, it may be prosecuted, indicted and convicted, and judgment rendered against it and satisfied by execution out of its assets. *United Mine Workers* v. *Coronado Co.*, 259 U.S. 344, 385-391, 392; *Dowd* v. *United Mine Workers of America*, 235 Fed. 1, 5-6.

2. By the same token, where Congress wills it, criminal liability may be imposed against the partnership entity and a fine collected from the partnership assets.[9] Thus, in *Evans Bros. Packing Co. et al.* v.

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[9] The American Law Institute has recommended the following legislation (Model Penal Code, Tent. Draft No. 5 (1956), § 2.07):

* * * * *

"(3) An unincorporated association may be convicted of the commission of an offense if and only if

"(a) the offense is defined by a statute other than the Code which expressly provides for the liability of such an association, and the conduct is performed by an agent of the association acting within the scope of his office or employment in behalf of the association, except that if the law defining the offense designates the agents for whose conduct the association is accountable or the conditions under which it is accountable, such limitations shall apply; or

"(b) the offense consists of an omission to perform an act which the association is required by law to perform; or

"(c) the offense is defined by Articles [or Sections] of the Code [or by specified statutes other than the Code] and the commission of the offense was authorized, requested, commanded, or performed by the executive board of the association, or by an agent having responsibility for the formation of association policy or by a high managerial agent having supervisory responsibility over the subject matter of the offense and acting within the scope of his office or employment in behalf of the association."

* * * * *

See Comments, Model Penal Code, Tent. Draft No. 4 (1955), pp. 152-154.

United States, 203 F. 2d 504 (C.A. 9), informations had been returned against the company, a partnership, and against each of three named partners, charging a series of violations of the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601, *et seq.* The district judge had imposed fines, under each count, upon the partnership, and separate fines, also under each count, upon the named individual partners. This was challenged on appeal as involving an unlawful duplication of penalties. The Court of Appeals rejected this contention, stating (p. 509):

> A key provision of the Act is found in § 608c(1) as follows: "The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in sections 601-608, 608a, 608b, 608c, 608d-612, 613, 614-619, 620, 623, and 624 of this title as "handlers." In § 608a(9) the term "person" so used is defined to include "an individual, partnership, corporation, association, and any other business unit." We think that a fair construction of the Act would make the partnership as a business unit a "handler."[10]

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[10] Compare *Adams Express Co.* v. *Commonwealth*, 27 Ky. L. Rep. 1096, where a partnership was convicted under a Kentucky penal statute for "willfully and knowingly" shipping and selling spirituous liquor, and a fine assessed against it. Reversal in this Court was solely on the ground that the Kentucky statute improperly interfered with interstate commerce. *Adams Express Co.* v. *Kentucky*, 206 U.S. 129.

Although there are few other reported cases which discuss the point, it has been common practice to proceed against partnerships, as entities, for violation of federal regulatory laws which provide that a partnership shall be treated as a person.[11] Until the *American Freightways* case (352 U.S. 1020), the district courts had assumed that the power exists—an assumption by no means surprising in light of this Court's declaration, more than 40 years ago, that the power of Congress "to personify [a] company" and "to charge the partnership assets with a liability" was undoubted. *United States* v. *Adams Express Co., supra,* 229 U.S. at 390.

There are no statistics available as to the number of criminal cases brought by the United States against partnerships. Such data is obtainable only by checking cases on a file-by-file basis. We have examined the Government files in cases brought under a number of regulatory acts during specified periods of time. While our search represents no more than a sampling, it suffices, we believe, to indicate the extent of the practice and of its acceptance by the district courts.

Under the Motor Carrier Act of 1935, it has been common practice to bring suit against partnerships (as well as against individual partners) almost since the inception of the motor-carrier enforcement program.[12]

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[11] The Department of Agriculture has informed us that the practice of bringing criminal proceedings against partnerships for violation of the Agricultural Marketing Agreement Act goes back ten years or more. An example of an early and successful prosecution of a partnership under that Act is *United States* v. *Maggio Co.*, S.D. Cal., Cr. 8653, 1946.

[12] The earliest case we have noted is *United States* v. *Moland Bros. Trucking Co. & H. T. Moland,* D. Minn., Cr. 589, 1939, in which the government proceeded successfully against the partnership defendant and against an individual partner.

In a period covering 1956, 1957 and part of 1958, there were thirty-five successful prosecutions under this statute against partnership entities; in all of these, fines were assessed.[13] In the same period, the total number of prosecutions under this statute against all types of motor carriers (corporation, individual and partnership) numbered approximately 482.

Apart from the *American Freightways* case, *supra,* we have found only one recent prosecution brought against a partnership under 18 U.S.C. 835. The defendant partnership pleaded guilty and was fined $750. *United States* v. *Cray Oil Company,* D. N. H., Cr. 6422, October 15, 1957.

Successful prosecutions of partnerships, during specified periods of time, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, *et seq.* (24 out of a total of 277 successful prosecutions against all types of violators),[14] the Meat Inspection Act, 21 U.S.C. 71, *et seq.* (13 successful prosecutions),[15] the Federal Seed Act, 7 U.S.C. 1551, *et seq.* (13 successful prosecutions),[16] the Animal Quarantine laws, 21 U.S.C.

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[13] The list of cases is set forth as Appendix A, *infra,* pp. 38-40.

[14] The Act defines "person" to include "individual, partnership, corporation, and association" (21 U.S.C. 321 (e)). It is not necessary to show *scienter* to establish a violation (Section 333(a)), but if the offense is committed with "intent to defraud or mislead", the penalty is increased to a maximum fine of $10,000, or a maximum prison sentence of 3 years (333(b)).

[15] The sections of the Act dealing with offenses and penalties refer to "any person, firm, or corporation, or any officer or agent of any such person, firm, or corporation" (21 U.S.C. 88). *Scienter* is not an element of the offenses.

[16] The Act defines "person" to include a "partnership, corporation, company, society, or association" (7 U.S.C. 1561(2)). *Scienter* is not an element of the offense (Section 1596), but the violations of employees are deemed also to be the violations of the business (Section 1597).

111, *et seq.* (3 successful prosecutions),[17] the Connally "Hot Oil" Act, 15 U.S.C. 715, *et seq.*[18] and 18 U.S.C. 1001 (false statements) are set out in Appendix B, *infra*, pp. 40-56.

3. There is good reason why partnerships have been personified and held criminally liable under federal regulatory statutes of the type referred to above. The aim of these laws is to control, in the public interest, the operations of the business organization, whether organized as corporation, joint stock association or partnership, and to impose criminal sanctions upon the business for departure from fixed standards of operation. Thus, the thrust of the Motor Carrier Act of 1935 and 18 U.S.C. 835 is to supervise, in the public interest and for the welfare of the motor trucking industry, the operations of all common carriers.

In deciding whether it should issue a franchise to a motor carrier—a valuable privilege—the Interstate Commerce Commission considers only the fitness and willingness of the applicant to perform the services proposed and whether such service will be in the interest of the public convenience and necessity (Sec. 207(a)). It does not consider the form in which the carrier operates, and it cannot refuse to grant a certificate solely because of the organizational makeup of the carrier. It should be noted that appellee Hopla Trucking Company applied for and was certified to operate as a partnership entity, and that the main burden of the charges lodged against appellee A & P Trucking

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[17] The prohibitions apply to "any person, company, or corporation" (21 U.S.C. 115, 117, 122). *Scienter* is an element of the offense.

[18] The Act requires proof that the violation was "knowingly" committed and defines "person" to include "an individual, partnership, corporation or joint-stock company" (15 U.S.C. 715(a)(4)).

Company was its failure to obtain such operating authority—a privilege which could not have been denied it because it was a partnership.

Applying the rationale of this Court in *United States* v. *Adams Express Co.*, 229 U.S. 381, 389, it seems manifest that where a partnership cannot be denied the valuable privilege of certification to carry on interstate trucking operations because it is a partnership, and where, in fact, a substantial number of carriers have been certified in that form, the partnership enterprise should not be allowed to escape its responsibility to meet the standards which attach to carrier status.

B. *There is no objection to establishing* scienter *by proving the knowledge of company agents or employees since the offenses charged arise from operation of the business and do not involve moral turpitude.*

1. An element of intent is contained in the offenses created under 18 U.S.C. 835 (*Boyce Motor Lines* v. *United States*, 342 U.S. 337; *United States* v. *Chicago Express Inc.*, 235 F. 2d 785 (C.A. 7)), and similarly a violation of Section 222(a) of the Motor Carrier Act of 1935 must be "knowingly and willfully" done. It does not follow, however, that business entities cannot be prosecuted for derelictions.

The requirement of proof of intent must be considered in the light of the statutory prohibitions. We are not dealing with classic common law crimes, such as larceny, which rest upon deeply ingrained concepts of personal blameworthiness and moral wrong—crimes which, in Justice Jackson's words (*Morissette* v. *United States*, 342 U. S. 246, 251), depend for their commission upon a "concurrence of an evil-meaning mind with an evil-doing hand." Rather, we are dealing with regu-

latory statutes which undertake to control a business affected with a public interest—statutes which establish certain standards for motor carriers and impose penalties upon those carriers which fail to meet or observe them.

"Aid in arriving at the meaning of the word 'willfully' may be afforded by the context in which it is used * * *." *United States* v. *Murdock*, 290 U. S. 389, 395; see *Hartzel* v. *United States*, 322 U. S. 680, 686; *Spies* v. *United States*, 317 U. S. 492, 497. In *United States* v. *Illinois Central Railroad Co.*, 303 U. S. 239, this Court had before it a charge against a corporation for "knowingly and willfully" failing to feed cattle in transit, in violation of an act to prevent cruelty to animals, 34 Stat. 607 (Section 2). The courts below had held that, although there was negligence of a yardmaster, there was no showing of wilful and knowing violation. This Court reversed, holding that, under the statute in question, an indifference to an affirmative legal duty might be considered "willful" (303 U.S. at 242-243):

> In statutes denouncing offenses involving turpitude, "willfully" is generally used to mean with evil purpose, criminal intent or the like. But in those denouncing acts not in themselves wrong, the word is often used without any such implication. Our opinion in *United States* v. *Murdock*, 290 U.S. 389, 394, shows that it often denotes that which is "intentional, or knowing, or voluntary, as distinguished from accidental" and that it is employed to characterize "conduct marked by careless disregard whether or not one has the right so to act."

The Court approved the view (p. 243) that the statute "is designed to describe the attitude of a carrier, who,

having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." See, also, *Boston & M. R. R.* v. *United States*, 117 F. 2d 428, 431 (C. A. 1).

The same principles have been applied to violations arising under other regulatory statutes, *e. g.*, to a wine dealer's "plain indifference" to the requirement of obtaining stamps, imposed by the Federal Alcohol Administration Act, 49 Stat. 977, *Rex Wine Corporation* v. *Dunigan*, 224 F. 2d 93, 95 (C.A. 2); to a violation of an executive order issued under Title III of the Second War Powers Act, 61 Stat. 945, *Trenton Chemical Co.* v. *United States*, 201 F. 2d 776, 779-780 (C.A. 6), certiorari denied, 345 U.S. 994; to a violation of the Fair Labor Standards Act of 1938, 52 Stat. 1060, *Nabob Oil Co.* v. *United States*, 190 F. 2d 478, 480 (C. A. 10), certiorari denied, 342 U. S. 876; and to a violation of the Elkins Act, 34 Stat. 587, *Boone* v. *United States*, 109 F. 2d 560 (C. A. 6). In the *Boone* case, the court stated (p. 563): "The penalty is not imposed for unwitting failure to comply with the statute, but for intentionally, carelesly, knowingly or voluntarily disregarding the provisions of the Act and its violation requires neither evil purpose nor criminal intent"; cf. *Armour Packing Co.* v. *United States*, 209 U.S. 56, 85-86.[19]

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[19] And see *United States* v. *Heilig*, 137 F. Supp. 462, 466 (D. Md.) (Fair Labor Standards Act); *Zimberg* v. *United States*, 142 F. 2d 132, 137-138 (C.A. 1), certiorari denied, 323 U.S. 712 (Emergency Price Control Act of 1942, 56 Stat. 23, 28); *Kempe* v. *United States*, 151 F. 2d 680, 688 (C.A. 8) (Emergency Price Control Act); *Hertz Drivurself Stations, Inc.* v. *United States*, 150 F.2d 923, 929 (C.A. 8) (Fair Labor Standards Act); *United States* v. *Capitol Meats, Inc.*, 166 F. 2d 537 (C.A. 2), certiorari denied, 334 U.S. 812 (Emergency Price Control Act); *Binkley Mining Co. of Missouri* v. *Wheeler*, 133 F. 2d 863, 870-871 (C.A. 8), certiorari denied, 319 U.S. 764 (Bituminous Coal Act of 1937, 50 Stat. 72, as amended).

The meaning of "willfullness" has also been considered in cases arising under Section 222(a) of the Interstate Commerce Act. In *United States* v. *E. Brooke Matlack, Inc.*, 149 F. Supp. 814 (D. Md.), a corporation was charged with wilfully violating regulations requiring that the drivers of vehicles keep daily logs (49 C.F.R., 1958 Cum. Supp., 195.8 (a)). In rejecting the claim that "willfully" means an evil or corrupt motive, the court declared (p. 819):

> The defense is only that the defendant was not acting wilfully and knowingly in failing to require proper logs from the drivers. In deciding this question there are certain well established principles that must be borne in mind. In the first place there can be no doubt that the defendant motor carrier well knew what the regulations required with respect to the logs and knew the importance thereof in relation to safety requirement. * * * The meaning and effect of the word "wilful" depends upon the context in which it is used in a criminal or penal statute. * * *
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> In the context of the criminal statute involved in this case the word does not connote the existence of an evil motive as it does in some situations involving moral turpitude, as, for instance, in an attempt to wilfully evade the payment of income taxes and thus to cheat the government. See *Spies* v. *United States*, 317 U.S. 492, 63 S. Ct. 364, *supra*. The statute in the present case does not create a crime of moral turpitude, such as were the well known felonies at common law, but enacts a new

statutory requirement to be observed by interstate motor carriers in the interest of public safety.

To similar effect, see *United States* v. *Reid*, 110 F. Supp. 253, 257 (D. Md.); *United States* v. *Gunn*, 97 F. Supp. 476, 480 (W.D. Ark.). Cf. *Inland Freight Lines* v. *United States*, 191 F. 2d 313, 316 (C.A. 10).[20]

The rationale of the *Matlack* case should be applied here. The purposes of the Motor Carrier Act of 1935 are to promote safe and adequate transportation service, to foster sound economic conditions in transportation, and to eliminate unfair or destructive practices.[21] To carry out these objectives, the Commission has adopted regulations relating, *inter alia*, to driver qualifications, health, driving rules, and safety equipment (see 49 C.F.R., parts 190-197). The carrier, its agents,

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[20] Cf. *Dearing* v. *United States*, 167 F. 2d 310 (C.A. 10), involving the prosecution of an employee (train conductor) for failure to make a true account of his cash fares in violation of Section 20(5) of the Interstate Commerce Act, 24 Stat. 379, as amended. In that context, with overtones of embezzlement, the court held that wilfulness means more than merely engaging in the proscribed conduct.

[21] This policy is enunciated in the Act (Section 202(a), 49 Stat. 543):

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part."

representatives and employees, are enjoined by the Commission to be conversant with and to implement such requirements. See 49 C.F.R., 1958 Cum. Supp., 191.1; 192.1; 193.1; 195.1; 195.8; 197.01; 197.1.

Two of the counts against appellee A & P Trucking Company deal with violations of these safety regulations.[22] These violations do not involve a question of turpitude; rather, they involve failure to meet the standard deemed essential for the proper control of interstate traffic.

Appellee A & P was also charged with failure to obtain certificates of convenience and necessity (counts 4-35) as required under the Act (Section 206a). The imposition of penalties upon those who engage in unlicensed operations is obviously designed to implement the regulatory scheme. Again, it is clear that use of the word "wilfully" cannot be taken to import a requirement of proving evil motive on the part of the defendant.

Nor does use of the word "knowingly" in 18 U.S.C. 835 preclude corporate or partnership responsibility. This statute is based upon "the need for protecting the public against the hazards involved in transporting explosives * * *." *Boyce Motor Lines* v. *United States*, 342 U.S. 337, 341. To carry out this purpose, the Commission has adopted detailed regulations (see 49 CFR. 77.800, *et seq.*). Appellee Hopla Trucking Company was charged with violating certain of these regulations by failing to mark properly its vehicle containing methanal, a flammable liquid (count 1), and by failing to

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[22] Permitting a driver to drive without a physical examination (count 2; 49 C.F.R., 1958 Cum. Supp., 191.8) and failure to equip a truck with a fire extinguisher (count 3; 49 C.F.R., 1958 Cum. Supp., 193.95(a)). (R. 2).

require its driver to have in his possession a memorandum showing the labels prescribed for the outside containers of such liquid (count 2) (R. 23-24). Appellee A & P Trucking Company was charged with failing to mark properly a truck containing an oxidizing material (count 1) (R. 1). These violations occurred despite the fact that the Commission had specifically ordered that carriers make these safety regulations effective.[23]

As Professor Sayre has said of statutory provisions having such a protective purpose, the objective "is not to cure or change the mental processes of the defendant. There is no thought of social treatment or rehabilitation. The law's aim is not reformatory, but almost exclusively deterrent, to prevent future repetitions of similar offenses." Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv. L. Rev. 689, 722 (1930). These are not statutes under which liability cannot be imputed to an entity because of "deep rooted notions" of personal responsibility. Sayre, *id.*, p. 717. They are business crimes for which the business as such is properly held liable.[24]

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[23] 49 C.F.R. 77.800 provides:

"(a) To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation of explosives and other dangerous articles, by common and contract carriers, by motor vehicle engaged in interstate or foreign commerce, the regulations * *.* are prescribed * * * to state the precautions that must be observed by the carrier in handling them while in transit. *It is the duty of each such carrier to make the prescribed regulations effective and to thoroughly instruct employees in relation thereto.*" [Emphasis added.]

[24] We are informed by the I.C.C. that even where a company is owned by a single individual enforcement suits have been instituted in the company name. If an individually owned company is prosecuted *qua* company, it would seem to follow, as in the case of any other suit against an entity, that the limit of the punishment would be a fine upon the business entity.

2. Since the statutes here involved do not import a requirement of proving that the defendant had a corrupt or evil motive, a motor-carrier defendant, sued as a business entity, may be held accountable for the knowing acts of its authorized agents and employees. Certainly, it is familiar doctrine that a corporation may be fined for the criminal acts of its agents, even though the regulatory statute describing the offense is one which makes knowledge an ingredient,[25] and that this liability may attach regardless of whether any of the corporation officials has knowledge or specific intent. As stated by Chief Judge Magruder in *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393, 398 (C.A. 1) (concurring opinion):

> In other words, in applying to a corporation an Act of Congress punishing "whoever knowingly" does something, it is usually held to be enough to charge the corporation with guilt if any agent or servant of the corporation, acting for the corporation in the scope of his employment, has the guilty knowledge, in accordance with the general

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[25] See, *e.g.*, *New York Central R.R.* v. *United States*, 212 U.S. 481; *United States* v. *Union Supply Co.*, 215 U.S. 50; *Joplin Mercantile Co.* v. *United States*, 213 Fed. 926, 935-936 (C.A. 8), affirmed, 236 U.S. 531; *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393, 398 (concurring opinion) (C.A. 1); *United States* v. *George F. Fish, Inc.*, 154 F. 2d 798, 801 (C.A. 2), certiorari denied, 328 U.S. 869; *United States* v. *Steiner Plastics Mfg. Co.*, 231 F. 2d 149, 153 (C.A. 2); *Mininsohn* v. *United States*, 101 F. 2d 477, 478 (C.A. 3); *United States* v. *Armour & Co.*, 168 F. 2d 342, 344 (C.A. 3); *Zito* v. *United States*, 64 F. 2d 772, 775 (C.A. 7); *United States* v. *P. F. Collier & Son Corp.*, 208 F. 2d 936, 941 (concurring opinion) (C.A. 7); *Egan* v. *United States*, 137 F. 2d 369, 379 (C.A. 8), certiorari denied, 320 U.S. 788; *C.I.T. Corp.* v. *United States*, 150 F. 2d 85, 89-90 (C.A. 9); Edgerton, *Corporate Criminal Responsibility*, 36 Yale L. J. 827, 832, *et seq.* (1927).

principles of the law of agency as applied in determining civil liability. See Am. L. Inst., Restatement of Agency, § 272 *et seq.* On this view, it would not be enough to absolve the corporation from liability for a criminal offense of the sort here in question, that no member of the board of directors, or no one of the higher executives, knew that a dangerous commodity was being transported by the company truck in a forbidden quantity without the markings required by the regulation.[26]

In *United States* v. *George F. Fish, Inc.*, 154 F. 2d 798 (C.A. 2), certiorari denied, 328 U.S. 869, an information charged the defendant corporation with knowing violation of federal price regulations. Considering the contention that the guilt of a company salesman could not be attributed to the corporation, the court, speaking through Judge Clark, rejected the notion (p. 801) that distinctions are to be "made in these cases between officers and agents, or between persons holding positions involving varying degrees of responsibility * * *. The purpose of the Act is a deterrent one; and to deny the possibility of corporate responsibilty for the acts of minor employees is to immunize the offender who really benefits, and open wide the door for evasion."

In *Gordon* v. *United States*, 347 U.S. 909, this Court held that individual partners not shown to have knowledge of the criminal acts of agents could not be convicted for "willful" violation of the Defense Pro-

[26] In *St. Johnsbury*, the judgment of the District Court was vacated and the case remanded for a new trial because "the trial court erroneously interpreted 18 U.S.C. 835 as requiring no element of culpable or blamable intent * * *" (220 F. 2d at 397).

duction Act of 1950, 64 Stat. 798, 814, where it was sought to impose vicarious liability, with possibility of imprisonment, upon the individuals for the knowing acts of agents.[27] There is, however, a vital difference between holding that individual partners cannot be personally punished where they are free of personal involvement in the criminal offense (as in *Gordon*)[28] and holding that a fine may not be imposed on the business entity for the knowing acts of its agents. Where the partnership as an entity is the defendant, sanctions can be executed only against the funds of the company. No individual partner can go to jail or suffer other penalty. Cf. *United States* v. *Union Supply Co.*, 215 U.S. 50.

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[27] Under familiar rules of criminal law, acts not authorized, counseled, advised or approved, cannot be imputed to a guiltless partner where committed by a co-partner or employee. See, *e.g.*, *Lurding* v. *United States*, 179 F. 2d 419, 421 (C.A. 6); *Sleight* v. *United States*, 82 F. 2d 459, 461 (C.A. D.C.); *Levin* v. *United States*, 5 F. 2d 598, 603 (C.A. 9), certiorari denied, 269 U.S. 562; *United States* v. *Cohn*, 128 Fed. 615, 623-624 (S.D. N.Y.), certiorari denied *sub nom. Browne* v. *United States*, 200 U.S. 618. Of course, individuals may be subject to criminal responsibility for acts of their agents for violations of "public welfare offenses" which do not make wilfullness or any degree of intent an element of the offense. *United States* v. *Dotterweich*, 320 U.S. 277; *United States* v. *Behrman*, 258 U.S. 280; Sayre, *Public Welfare Offenses*, 33 Col. L. Rev. 55 (1933); Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv. L. Rev. 689 (1930); cf. *Morissette* v. *United States*, 342 U.S. 246, 255-260. Cases imposing criminal liability upon the principal for the acts of agents, primarily dealing with liquor sales, false weights and adulterated milk, are set out in 43 L.R.A. (N.S.) 1, 21 *et seq.*; see, also, Model Penal Code, Tent. Draft No. 4, pp. 141-146 (April 25, 1955).

[28] As Professor Sayre has pointed out, "if the offense be punishable by imprisonment, the individual interest of the defendant weighs too heavily to allow conviction without proof of a guilty mind." Sayre, *Public Welfare Offenses*, 33 Col. L. Rev. 55, 72 (1933).

Equality of treatment amongst all "common carriers" is essential to proper control of interstate carriage. The public and the motor carrier industry need protection from unsafe and unlicensed practices irrespective of whether the violations result from the acts of corporations, partnerships, or sole proprietorships. It is no answer to say that sanctions can be enforced against the individual employee or agent who commits the transgression. Sound enforcement depends upon penalizing the business, which stands to benefit from laxity and the taking of "shortcuts." The observance of safe and sound practices within a carrier organization depends primarily upon the vigor and the regularity of supervision and training from above. Especially is this true in a large carrier organization where overlapping functions and duties make it extremely difficult to pinpoint each employee or agent whose knowing actions or omissions contributed to the offense.

The regulations inform the carrier of its responsibility to instruct, train, and supervise its employees. With good reason, the carrier is held responsible for making effective the regulations relating to the safe carriage of explosives (49 C.F.R. 77.800, *supra*, p. 32, n. 23). Similarly, it is the carriers responsibility to implement the safety regulations under the Motor Carrier Act of 1935, dealing with driver qualification, safety rules, safety equipment, etc. (see *e. g.*, 49 C.F.R., 1958 Cum. Supp., 191.1, 192.1, 193.1, 195.1, 195.8, 196.1, 197.01; 197.1).[29] To say that a business entity may

[29] Imposing responsibility upon the carrier itself to direct and train its employees in the requirements of the regulations is usual practice whether the carriage be by motor vehicle, water or rail. See, *e.g.*, 49 C.F.R. 73-1; 74.500; 75.650.

avoid this responsibility by operating in partnership form would be to invite it to shirk its duties to the public. We are not concerned here, it must be emphasized, with an ordinary commercial partnership operating outside the scope of federal control. Rather, we are dealing with companies licensed to operate in a closely regulated business which vitally affects the public. See *American Trucking Associations, Inc.* v. *United States*, 344 U. S. 298; cf. *Tank Truck Rentals* v. *Commissioner*, 356 U. S. 30, 34.

We submit, in sum, that Congress had both the requisite power and purpose:—that, acting within its prerogatives and recognizing the need for uniform enforcement of carrier responsibilities, it has undertaken to treat all carriers alike. A partnership, no less than a corporation, may enjoy the privilege of a franchise. And a partnership, no less than a corporation, is subject to the sanctions that fall upon carriers which fail to meet the regulatory standards.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the orders of the District Court should be reversed and the case remanded for further proceedings under the informations.

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APPENDIX A

Successful Prosecutions of Partnerships under the Interstate Commerce Act, Part II, 49 Stat. 543, as amended (Motor Carrier Act of 1935), during the Years 1956, 1957 and Part of 1958

United States v. *Sinclair Manufacturing Co.*, N. D. Ohio, Cr. 10450, March 1, 1957 (charged as an aider and abettor under 18 U.S.C. 2);

United States v. *Nixon Brothers Transfer*, E.D. N.Car., Cr. 9829-CC, April 8, 1957;

United States v. *Western Buyers*, N.D. Iowa, Cr. 2368, December 17, 1956;

United States v. *McCue Feed Store*, D. Neb., Cr. 38L, April 12, 1957;

United States v. *B & F Transportation, E. D. Va.*, Cr. 3327, April 29, 1957;

United States v. *Hagan and Stone*, W.D. Ky., Cr. 3500, May 20, 1957;

United States v. *Studer Truck Line*, D. Kan., Cr. 10160, April 12, 1957;

United States v. *L & S Steel Supply Co.*, D. Neb., Cr. 0207, May 9, 1957;

United States v. *Stanley F. Heller & Son*, M.D. Pa., Cr. 12926, May 27, 1957;

United States v. *Mumby Oil Company*, D. Neb., Cr. 42L, May 13, 1957;

United States v. *Mar-Rube Truck Rental*, D. Md., Cr. 23993, September 23, 1957;

United States v. *Joseph H. Smith & Company*, D. Md., Cr. 24006, July 25, 1957;

United States v. *Ochroch Transportation Company*, E.D. Pa., Cr. 19320, October 22, 1957;

United States v. *F. S. Parker & Company*, D. Md., Cr. 24050, November 1, 1957;

United States v. *Southern Asphalt & Petroleum Company*, N.D. Texas, Fort Worth Div., Cr. 9785, September 25, 1957;

United States v. *Mack Transportation Company*, E.D. Pa., Cr. 19376, 24100, February 4, 1958;

United States v. *Mumby Oil Company*, D. Neb., Cr. 0252, November 8, 1957;

United States v. *E. C. Newman Produce Company*, W.D. Va., Cr. 8867, April 14, 1958;

United States v. *Bareford Brothers*, E.D. Va., Cr. 6447, April 8, 1958;

United States v. *Heeren Brothers*, W.D. Mich., Cr. 6280, February 25, 1958;

United States v. *Christian Brothers*, D. Md., Cr. 24301, April 25, 1958;

United States v. *McConnell Heavy Hauling*, E.D. Ark., Cr. 16305, March 26, 1958;

United States v. *David Goldman and Brothers*, E.D. Pa., Cr. 19474, March 19, 1958;

United States v. *Joseph H. Smith Company*, E.D. Pa., Cr. 19271, September 20, 1957;

United States v. *B. K. Barb Trucking Company*, W.D. Va., Cr. 5922, April 14, 1958;

United States v. *Knapp-Sherrill Company*, S.D. Tex., Brownsville Div., Cr. 40702, May 13, 1958 (charged as aider and abettor under 18 U.S.S. 2);

United States v. *Naffziger Bros.*, D. Kan., Cr. 10055, 1956;

United States v. *Stegall Milling Co.*, W.D. N.C., Cr. 872 and 858, 1956;

United States v. *Airline Vans*, N.D. Tex., Dallas Div., Cr. 14041, 1956;

United States v. *Rogers Truck Line*, D. Neb., Cr. 0109, 1956;

United States v. *Tyler Fertilizer Co.*, E.D. Tex., Jeff. Div., Cr. 1989 and 1990, 1956;

United States v. *Temple Dr. Pepper Bottling Co.*, W.D. Tex., Waco Div., 1956;

United States v. *Jackson & Gray Bus Service*, E.D. Pa., Cr. 18563, 1956;

United States v. *Hill Oil Co.*, D. Neb., Cr. C-057, 1956;

United States v. *Thrift Transfer Co.*, E.D. Va., Cr. C-3166, 1956.

APPENDIX B

Examples of Successful Prosecutions of Partnerships under other Regulatory Statutes

1. Information as to prosecutions under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, *et seq.*, is in more readily accessible form than information as to prosecutions under other regulatory statutes, since the Food and Drug Administration publishes periodic printed reports, entitled "Notices of Judgment under the Federal Food, Drug, and Cosmetic Act," which summarize cases which have gone to judgment. The reports published during the period December 1955-December 1957 show that criminal judgments against defendants for violations of the Act were entered in 277 cases, and that in twenty four of these cases (summaries reprinted below, pp. 40-53) a partnership was a defendant in the proceeding:

4811. (F.D.C. No. 35612. S. Nos. 85-983/4 L, 88-580 L.)

INFORMATION FILED: 3-21-55, Dist. S. Dak., against Independent Drug Store, a partnership, Sioux Falls, S. Dak., and William Trimble (manager). Cr. 2882.

CHARGE: Between 5-19-54 and 6-30-54, *Benzedrine Sulfate tablets* were dispensed 3 times without a prescription.

PLEA: Guilty.

DISPOSITION: 10-25-55. Each defendant fined $150.

4820. (F.D.C. No. 37217. S. Nos. 58-667/70 L, 65-781/2 L.)

INFORMATION FILED: 4-7-55, E. Dist. Mich., against Day Drug Co. (a partnership), Detroit, Mich., and Edward A. Klar and Solomon Budney (partners and pharmacists). Cr. 34850.

CHARGE: Between 3-12-54 and 4-1-54, *dextro-amphetamine sulfate tablets, methyltestosterone tablets,* and *methantheline bromide tablets* were each dispensed twice without a prescription.

PLEA: Nolo contendere.

DISPOSITION: 1-23-56. Partnership fined $600 and Klar and Budney fined $600 jointly. Fine against Klar and Budney suspended for 1 year.

4832. (F.D.C. No. 37220. S. Nos. 38-544 L, 72-114 L, 72-121/2 L.)

INFORMATION FILED: 7-14-55, E. Dist. N.Y., against Nassau Chemists (a partnership), Baldwin, N.Y., and Saul Witheiler and Harry Lichtiger (partners), Cr. 44045.

CHARGE: Between 5-11-54 and 6-3-54, *Seconal Sodium capsules* were dispensed twice and *Gantrisin tablets* and *capsules containing a mixture of secobarbital sodium and amobarbital sodium* were each dispensed once upon requests for prescription refilled without authorization by the prescribers.

PLEA: Guilty—by partnership to all charges reported herein, by Witheiler to dispensing *Gantrisin tablets* and *capsules containing a mixture of secobarbital sodium and amobarbital sodium,* and by Lichtiger to dispensing *Seconal Sodium capsules.*

DIPOSITION: 8-11-55. Partnership fined $100 and each individual fined $700.

4837. (F.D.C. No. 37250. S. Nos. 66-968/9 L, 66-971 L.)

INFORMATION FILED: On or about 3-22-55, E. Dist. Pa., against Adams Drug Store, a partnership, Reading, Pa., and Oliver F. Adams (a partner), Cr. 18299.

CHARGE: Between 6-9-53 and 6-18-53, *capsules containing ergot* were dispensed 3 times without a prescription.

PLEA: Guilty.

DISPOSITION: 9-9-55. Partnership fined $150 and individual $300.

4845. (F.D.C. No. 38510. S. Nos. 16-181 M, 16-191/4 M.)

INFORMATION FILED: 11-3-55, Dist. Mont., against Ronan Drug Co. (a partnership), Ronan, Mont., and Norman D. Coster (a partner), Cr. 3706.

CHARGE: Between 1-19-55 and 3-24-55, *pentobarbital sodium capsules, Seconal Sodium capsules,* and *capsules containing a mixture of Seconal Sodium and Amytal Sodium* were each dispensed once without a prescription, and *Seconal Sodium capsules* and *pentobarbital sodium capsules* were each dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Guilty.

DISPOSITION: 11-28-55. Partnership—$250 fine; individual—prison sentence of 3 months suspended and probation for 2 years.

4876. (F.D.C. No. 37873. S. Nos. 60-574 L, 60-577 L, 60-588 L, 60-602 L, 60-654 L, 60-659 L, 60-877/8 L.)

INFORMATION FILED: 9-9-55, W. Dist. S.C., against Economy Drug Co. (a partnership), Anderson, S.C., and Jack H. Wright and John W. Glenn (partners in the partnership), Paul J. High and George W. Evans (pharmacists), and William F. Kirby (an employee).

CHARGE: Between 7-1-54 and 9-15-54, *Nembutal Sodium Capsules* (counts 1, 2, 3, and 4) and *Seconal Sodium capsules* (counts 5, 6, 7, and 8) were each dispensed 4 times upon requests for prescription refills without authorization by the prescriber.

PLEA: Nolo contendere—by partnership to each of 8 counts of information; by William F. Kirby to count 1; by Jack H. Wright to counts 2, 6, and 8; by Paul J. High to counts 3 and 5; by George W. Evans to count 4; and by John W. Glenn to count 7.

DISPOSITION: 10-24-55. Partnership—$1.00 fine; Wright and Glenn—$100 fine each; other individuals—$25 fine each.

4877. (F.D.C. No. 37886. S. Nos. 60-491 L, 60-498 L, 60-562 L, 60-593 L, 60-684 L, 60-779 L, 60-782 L.)

INFORMATION FILED: 7-22-55, S. Dist. Fla., against Silver Palace Pharmacy (a partnership), Fort Pierce, Fla., and George E. Felt, Delmas E. Wallis, and William K. Nye (pharmacists), Cr. 9424.

CHARGE: Between 5-22-54 and 8-30-54, *Seconal Sodium capsules* (counts 1, 2, and 3) and *cortisone acetate tablets* (counts 4, 5, and 7) were each dispensed 3 times and *Terramycin tablets* (count 6) were dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Nolo contendere—by partnership to each count; by Felt to counts 1, 5, and 6; by Wallis to counts 2 and 3; and by Nye to counts 4 and 7.

DISPOSITION: 11-4-55. Partnership—$200 fine on count 1; sentence withheld on remaining counts. Fine of $50 each against Felt on count 1, Wallis on count 2, and Nye on count 4. Imposition of sentence against individuals withheld with respect to remaining counts to which individuals had pleaded.

4962. (F.D.C. No. 38161. S. Nos. 1-682/4 M, 1-686/7 M.)

INFORMATION FILED: 10-25-55, S. Dist. Ga., against Jones Truck Stop (a partnership), 1 mile south of Folkston, Ga., and Troy E. Jones (a partner), and Robert Franklin Phillips and Betty Crews (employees), Cr 1139.

CHARGE: Between 5-6-55 and 5-10-55, *amphetamine sulfate tablets* were dispensed 5 times without a prescription.

PLEA: Guilty—by Jones Truck Stop and Jones to all counts, by Crews to count 3, and by Phillips to count 4.

DISPOSITION: 4-30-56. Partnership and Jones fined $1,000 jointly and placed on probation for 2 years; Crews and Phillips each fined $50 and placed on probation for 2 years.

4979. (F.D.C. No. 38545. S. Nos. 4-777 M, 5-734 M, 5-737 M, 5-739 M.)

INFORMATION FILED: 11-29-55, N. Dist. Ill., against Althafer's Drugstore (a partnership), Crystal Lake, Ill., and Richard W. Copeland (a partner in the partnership) and Gertrude M. H. Copeland (apprentice pharmacist). 55 C.R. 640.

CHARGE: Between 12-10-54 and 2-5-55, *Pentids tablets* (counts 1, 2, and 3) were dispensed 3 times and *Pondets troches* (penicillin-bacitracin troches) (count 4) were dispensed once without a prescription.

PLEA: Nolo contendere—by partnership to each of 4 counts of information, by Richard W. Copeland to counts 1, 2, and 4, and by Gertrude M. H. Copeland to count 3.

DISPOSITION: 12-9-55. Partnership—$100 fine, plus costs; Richard W. Copeland—$200 fine; and Gertrude M. H. Copeland—$100 fine.

5043. (F.D.C. No. 38143. S. Nos. 59-899 L, 59-904 L, 59-907/8 L.)

INFORMATION FILED: 9-28-55, W. Dist. N.C., against Kiser Drug Co. (a partnership), Charlotte, N.C., and Edna Puckett (an employee), Cr. 770.

CHARGE: Between 6-11-54 and 6-25-54, *phenobarbital tablets* were dispensed 3 times and *Gantrisin tablets* were dispensed once without a prescription.

PLEA: Nolo contendere—by each defendant to all counts.

DISPOSITION: 10-10-55. Partnership fined $200; Puckett fined $250 and placed on probation for 2 years.

5050. (F.D.C. No. 38568. S. Nos. 4-947/8 M, 5-049 M, 5-051 M, 5-054/5 M.)

INFORMATION FILED: 1-30-56, N. Dist. Ill., against Triangle Pharmacy (a partnership), Chicago, Ill., Bernard Rosenbloom (partner and pharmacist), Michael Joseph Rio (employee), and Salvatore Pape (apprentice pharmacist), 56 C.R. 49.

CHARGE: Between 1-7-55 and 1-18-55, *penicillin G potassium tablets* (counts 1 and 5) and *apiol-ergot compound capsules* (counts 2 and 3) were each dispensed twice and *Sec-Amobarb capsules* (count 4) and *Metandren Linguets* (count 6) were each dispensed once, without a prescription.

PLEA: Guilty—by partnership to all counts of the information; by Rosenbloom to counts 1, 2, and 3; by Rio to counts 4 and 6; and by Pape to count 5.

DISPOSITION: 3-7-56. Parnership fined $100; Rosenbloom, $500, plus costs; Rio, $200; and Pape, $100.

5056. (F.D.C. No. 37830. S. Nos. 63-088 L, 63-751 L, 63-951 L, 72-780 L, 72-785 L, 72-790 L.), Cr. 18341.

INFORMATION FILED: 4-1-55, E. Dist. Ill., against Douglas Drug Co. (a partnership), Mt. Vernon, Ill.,

Douglas A. Sapper, Sr. and Douglas A. Sapper, Jr. (partners in the partnership), and Doran Laverne Kernodle (a pharmacist for the partnership).

CHARGE: Between 9-3-54 and 10-11-54, *diethylstilbestrol tablets* (counts 1 and 3) and *sulfisoxazole tablets* (counts 5 and 6) were each dispensed twice and *thyroid tablets* (count 2) were dispensed once without a prescription, and *dextro-amphetamine sulfate capsules* (count 4) were dispensed once upon request for a prescription refill without authorization by the prescriber.

PLEA: Guilty—by partnership to all 6 counts of the information; by Douglas A. Sapper, Sr., to counts 1, 2, 3, and 4; by Douglas A. Sapper, Jr., to count 5; and by Doran Laverne Kernodle to count 6.

DISPOSITION: 4-19-55. Fine of $600 against partnership, $400 against Douglas A. Sapper, Sr., $100 against Douglas A. Sapper, Jr., and $100 against Doran Laverne Kernodle. The fine against the partnership was abated by the fines against the individuals.

4524. (F.D.C. No. 37168. S. Nos. 85-015/16 L, 85-031/32 L, 85-045 L, 85-047 L, 85-149/50 L.)

INFORMATION FILED: 9-30-54, Dist. Del., against Bartley Drug Store (a partnership), Wilmington, Del., and Italo R. Debartolomeis and Salvatore Leoncavallo (partners), Cr. 993.

CHARGE: Between 11-25-53 and 12-17-53, *Dexedrine Sulfate tablets* were dispensed 4 times (counts 1 to 4, incl.) and *phenobartial tablets* were dispensed 4 times (counts 5 to 8, incl.) upon requests for prescription refills without authorization by the prescribers.

PLEA: Nolo contendere—by partnership to counts 1 to 8, incl.; by Debartolomeis to counts 2, 3, 6, and 7; by Leoncavallo to counts 1, 4, 5, and 8.

DISPOSITION: 11-12-54. Partnership—$400 fine; individual defendants—imposition of sentence suspended and each placed on probation for 2 years.

4532. (F.D.C. No. 35749. S. Nos. 14-665 L, 69-275 L.)

INFORMATION FILED: 12-54-53 Dist. Colo., against University Park Medical Clinic Pharmacy (a partnership), Denver, Colo., and Jake DeGarmo (pharmacist), Cr. 13925.

CHARGE: Between 12-26-52 and 1-2-53, *pentobarbital sodium capsules* and *secobarbital sodium capsules* were each dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Guilty by each defendant.

DISPOSITION: 8-18-54. Partnership fined $1,000; individual placed on probation for 3 years.

4565. (F. D. C. No. 34322. S. Nos. 14-804/7 L, 14-809/11 L.)

INFORMATION FILED: 4-13-53, Dist. Kan., against Self Service Drugs, a partnership, Hutchinson, Kan., Marvin W. Gates, manager of the partnership, and Earl R. Hanna and Frank Sewell, pharmacists, Cr. 9011.

CHARGE: Between 3-26-52 and 4-10-52, *dextro-amphetamine sulfate tablets* were dispensed 4 times (counts 1, 2, 3, and 4) and *Mebaral tablets* were dispensed 3 times (counts, 5, 6, and 7) without a prescription. Such dispensing resulted in the drugs being misbranded as follows: 502 (b) (2)—the drugs failed to bear labels containing an accurate statement of the quantity of contents; and, 502 (f) (1)—the labeling of the drugs failed to bear adequate directions for use.

The drugs were further misbranded as follows: 502 (e) (2)—the label of the *dextro-amphetamine sulfate tablets* failed to bear the common or usual name of each active ingredient; and, 502 (d)—the *Mebaral tablets* contained a chemical derivative of barbituric acid, and the label of the tablets failed to bear the name, and quantity or proportion of such derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

PLEA: Nolo contendere, by partnership to counts 1, 2, 3, 4, and 5; by Gates to counts 1, 2, 3, and 4; by Hanna to counts 1, 3, 4, 6, and 7; and by Sewell to counts 2 and 5.

DISPOSITION: 6-23-63—court fined partnership $175, Gates $100, and Sewell $50, and assessed costs against each defendant. 10-12-54—Hanna fined $50.

4615. (F. D. C. No. 36677. S. Nos. 59-487 L, 59-572/5 L, 60-318 L.)

INFORMATION FILED: 4-1-55, E. Dist. S. C., against Colonial Drug Store (a partnership), Florence, S. C., Duncan S. Farrow (partner and manager), and Ward S. Woodard (clerk for the partnership), Cr. 20553.

CHARGE: Between 10-26-53 and 12-4-53, *dextro-amphetamine sulfate tablets* were dispensed 3 times, *sulfisoxazole tablets* were dispensed twice, and *penicillin tablets* were dispensed once without a prescription.

PLEA: Guilty—by partnership and Farrow to all counts of the information and by Woodard to 3 counts involving dispensing of *detro-amphetamine sulfate tablets* and *sulfisoxazole tablets.*

DISPOSITION: 4-25-55. Farrow—$200 fine; partnership and Woodard—each $100 fine.

4630. (F. D. C. No. 36672. S. Nos. 64–271/2 L.)

INFORMATION FILED: 2-3-55, Dist. Alaska, against Rexall Drug Store (a partnership), Anchorage, Alaska, Charles J. Abel (a partner in and manager of the partnership), and Charles W. Barton and Richard C. Cornell (pharmacists for the partnership), Cr. 3151.

CHARGE: Between 8-27-53 and 8-29-53, *penicillin G potassium tablets* (count 1) and a quantity of a drug consisting of *dibenzylethylenediamine dipenicillin G, procaine penicillin G, and potassium penicillin G for aqueous injection* (count 2) were each dispensed once without a prescription.

PLEA: Guilty—by partnership, Charles J. Abel, and Charles W. Barton to count 1, and by Richard C. Cornell to count 2.

DISPOSITION: 3-14-55, Cornell fined $250; 6-24-55, partnership fined $350 and Abel and Barton each fined $50.

4640. (F. D. C. No. 35805. S. Nos. 69–804/6 L, 69–808 L, 69–810 L, 69–812 L.)

INFORMATION FILED: 10-14-53, Dist. Utah, against Clearfield Pharmacy, a partnership, Clearfield, Utah, and Glade R. Day and Leslie B. Otte (partners), Cr. 51-54.

CHARGE: Between 11-12-52 and 8-27-53, *secobarbital sodium capsules* were dispensed 3 times (counts 2, 3, and 6), *sulfadiazine tablets* were dispensed twice (counts 1 and 5), and a quantity of *procaine penicillin G* was dispensed once (count 4), without a prescription.

PLEA: Guilty—by partnership to all 6 counts of information; by Day to counts 1, 2, 3, 4, and 6; and by Otte to count 5.

DISPOSITION: 6-7-54. Partnership fined $6,000; Day given suspended prison sentence of 5 years and placed on probation for 5 years; Otte fined $1,000 and given suspended prison sentence of 1 year and placed on probation for 1 year.

4683. (F. D. C. No. 37218. S. Nos. 85–748/9 L.)

INFORMATION FILED: 3-14-55, Dist. Wyo., against Hospital Pharmacy (a partnership), Sheridan, Wyo., Cr. 6487.

CHARGE: Between 3-30-54 and 4-7-54, *pentobarbital sodium suppositories* were dispensed once upon request for a prescription refill without authorization by the prescriber, and *dextro-amphetamine sulfate tablets* were dispensed once without a prescription.

PLEA: Guilty.

DISPOSITION: 3-21-55. $50 fine.

4687. (F. D. C. No. 37189. S. Nos. 89–815 L, 89–861 L, 89–874 L, 89–886 L, 89–903 L, 89–958 L.)

INFORMATION FILED: 5-13-55, Dist. Mass., against Costanza Pharmacy (a partnership), Revere, Mass., and Charles A. Costanza and Louis Costanza (partners in the partnership), Cr. 55-110-5.

CHARGE: Between 3-24-54 and 4-20-54, *Premarin tablets* were dispensed once without a prescription, and *Benzedrine Sulfate tablets* were dispensed 3 times and *pentobarbital sodium capsules* and *penicillin tablets* were each dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Guilty—by partnership to all 6 counts of information; by Charles A. Costanza to 3 counts; and by Louis Costanza to 3 counts.

DISPOSITION: 10-5-55. Partnership fined $100; each individual fined $250.

4698. (F. D. C. No. 37204. S. Nos. 72–792/3 L, 72–796/7 L.)

INFORMATION FILED: 1-12-55, E. Dist. Ill., against Sweney Bros. & Co. (a partnership), Salem, Ill., and A. J. Sweney and Lee Harper Sweney (partners), Cr. 18295.

CHARGE: Between 6-22-54 and 6-28-54, *Sulfisoxazole tablets* were dispensed twice and *dextro-amphetamine sulfate tablets* and *thyroid tablets* were each dispensed once without a prescription.

PLEA: Guilty.

DISPOSITION: 2-16-55. $400 fine.

4705. (F. D. C. No. 37164. S. Nos. 83–463/4 L. 83–466/8 L.)

INFORMATION FILED: 12-15-54, W. Dist. Wis., against City Drug Store (a partnership), Hurley, Wis., Cr. 13444.

CHARGE: Between 3-2-54 and 3-9-54, *Dexedrine Sulfate tablets,* and *seco-barbital sodium capsules* were each dispensed twice and *Neotresamide tablets* were dispensed once without a prescription.

PLEA: Guilty.

DISPOSITION: 6-27-55. $275 fine.

4730. Dried herbs. (F. D. C. No. 36575. S. Nos. 58–274 L, 58–896 L.)

INFORMATION FILED: 8-9-54, N. Dist. Ill., against Z. G. Stanis Co., a partnership, Chicago, Ill., Cr. 464.

ALLEGED VIOLATION: Between 1947 and 11-19-53, the defendant, while holding a number of bags of Seventeana tea for sale after shipment in interstate commerce, caused such article to be held in a building accessible to insects and to be exposed to contamination by insects; caused a quantity of the

article to be repacked into boxes under the designation "Z-G Herbs" and to be accompanied by a leaflet; and caused a number of boxes of the article accompanied by the leaflet to be introduced into interstate commerce for delivery to Milwaukee, Wis.

LABEL IN PART: (Bag) "102 Lbs. Seventeana Tea"; (box) "Z–G Herbs Net Weight 4 Oz. No. 17 Herb Tea."

ACCOMPANYING LABELING: Leaflet entitled "Temporary List of Z. G. Herbs and Stanis Products."

CHARGE: 501 (a) (1)—contained insects and insect parts while held for sale and when shipped by the defendant as described above: 501 (a) (2)—held under insanitary conditions; and 502 (a)—the accompanying labeling contained false and misleading representations that the article was an adequate and effective treatment for stomach disorders.

PLEA: Nolo contendere.

DISPOSITION: 3-8-55. $400 fine, plus costs.

4747. (F. D. C. No. 29458. S. Nos. 15–860 K, 41–953/4 K, 41–964/5 K, 60–679/80 K.)

INFORMATION FILED: 9-11-50, E. Dist. Wis., against Lyon Drug Co., a partnership, Milwaukee, Wis., and Walter G. Kopling, a partner. Cr. 361–T.

CHARGE: Between 10-17-49 and 12-19-49, 3 sales of *Seconal Sodium capsules* and 4 sales of *Nembutal capsules* were made by the defendants without obtaining a physicians prescription, which acts resulted in the drugs being misbranded as follows: 502 (b) (2)—each drug failed to bear a label containing a statement of the quantity of contents; 502 (d)—each drug contained a chemical derivative of barbituric acid, and its label failed to bear

the name and quantity or proportion of such derivative and in juxtaposition therewith the statement "Warning: May be habit forming"; and 502 (f) (1) —the labeling of each drug failed to bear adequate directions for use.

DISPOSITION: On 10-9-50, the defendant filed a motion to suppress evidence. The matter came on for hearing before the court on 3-1-54; and, on 6-25-54, the court handed down the following opinion in denial of the motion:

* * * * *

On 10-12-54 a plea of guilty was entered by the partnership to counts 1, 2, 3, and 4 of the information and, by agreement of the parties, the charges against the partnership on counts 5, 6, and 7 and against the individual on all counts were dismissed. On 12-20-54, the court fined the partnership $700.

2. For the period 1950-1957, we have noted the following unreported cases involving successful prosecution of partnerships for violation of the Meat Inspection Act, 21 U. S. C. 71, *et seq*:

United States v. *Gavosto & Moretto Co.*, W. D. Wash., Cr. 48161, 1950;

United States v. *Hub Sales Company*, E. D. Wash., 1952;

United States v. *Jason Supply Company, Capt. H. Hansen & Son, D. Mass., Cr.* 53-41-M, 1953;

United States v. *Quality Packing Company*, E. D. Mich., 1953;

United States v. *M. Wagenheim Sons*, D. N. J., Cr. 14-53, 1953;

United States v. *Harry M. Carpenter and Sons*, S. D. Ga., Cr. 4045, 1954;

United States v. *Wallace Beef Company,* E. D. Penna., Cr. 17583, 1954;

United States v. *Superior Meat Processors,* S. D. N. Y., 1954;

United States v. *Globe Packing Company,* S. D. Cal., Cr. 24110-CD, 1955;

United States v. *Pfister Meat Company,* E. D. Mo., Cr. 27809, 1954;

United States v. *Colonial Corned Beef Co.,* N. D. Ill., Cr. 45, 1955;

United States v. *Arco Dog Food Co.,* N. D. N. Y., Cr. 31789, 1955;

United States v. *United Provision Company,* E. D. Pa., Cr. 18547, 1956.

3. The following cases represent successful prosecution of partnerships, during the period 1953-1957, for violations of the Federal Seed Act, 7 U. S. C. 1551, *et seq:*

United States v. *Wallace Seed Company,* a partnership, M. D. Tenn., Cr. 1228, 1957;

United States v. *Jenks-White Seed Company,* a nership, D. C. Or., Cr. 18207, 1957;

United States v. *Lankart Seed Farms, Ltd.,* a Limited partnership, E. D. Tex., Waco Div., Cr. 4750, 1957;

United States v. *T. W. Wood and Sons,* E. D. Va., Cr. 5471, 1953;

United States v. *William G. Scarlett & Company,* D. Md., Cr. 22459, 1953;

United States v. *Green & Carver Seed Company,* E. D. Tenn., Cr. 8101, 1953;

United States v. *T. W. Wood and Sons,* E. D. Va., Cr. 5205, 1954;

United States v. *T. W. Wood and Sons,* E. D. Va., Cr. 5602, 1954;

United States v. *Wertheimer-McGuin Seed Company,* N. D. Ind., Cr. 1530, 1954;

United States v. *The Wax Company,* N. D. Miss., 1955;

United States v. *Jack W. Derryberry Seed Co.,* M. D. Tenn., Cr. 12034, 1955;

United States v. *Roberts Seed Company,* D. N. Mex., Cr. 18775, 1955;

United States v. *William G. Scarlett & Company,* D. Md., Cr. 23308, 1956.

4. Successful prosecutions of partnerships under the Animal Quarantine laws, 21 U. S. C. 111, *et seq*:

United States v. *New Albany Sales Co.,* a partnership, N. D. Miss., W. Div., Cr. 8335, 1955;

United States v. *Faust, Aydlett and Rochelle, a partnership, Brite and Tatum, a partnership, et al.,* E. D. N. C., New Bern Div., Cr. 5906, 1955;

United States v. *Western Livestock Order Buyers, a corporation, Earl Britton, Montana Livestock Auction Co., a partnership, and Union Pacific R. Co., a corporation,* D. Utah, Cr. 86-55, 1956.

5. In *United States* v. *Carter-Jones Drilling Co., a partnership, et al.,* E. D. Tex., Tyler Div., Cr. 5872, 1953, the partnership defendant was fined $2,400 for violations of the Connally "Hot Oil" Act, 15 U. S. C. 715, *et seq.* This Act requires proof that the violation was "knowingly" committed, 15 U. S. C. 715e, and it defines "person" to include "an individual, partnership, corporation or joint-stock company," 15 U.S.C. 715a (4).

United States v. *Gravis and Mitchell, a partnership, et al.*, E. D. La., Baton Rouge Div., Cr. 24,795, 1953, another case arising out of the requirements imposed by the "Hot Oil" Act, involved a prosecution of a partnership and others for conspiracy to violate 18 U. S. C. 1001 (knowingly making false statements in a matter within the jurisdiction of a department or agency of the United States). The partnership defendant was found guilty on numerous counts and fined a total of $20,000. Like 18 U. S. C. 835, 18 U. S. C. 1001 begins with the word "Whoever".

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 474435 12p

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 32.

UNITED STATES OF AMERICA,
Appellant,

vs.

A & P TRUCKING CO., a partnership composed of ALEX SCHUB, ALDO IAFRATE, and ARTHUR CLOUGH; and SOL LIEBMAN,
Appellees.

UNITED STATES OF AMERICA,
Appellant,

vs.

HOPLA TRUCKING COMPANY, a partnership composed of WILLIAM LEVINE and MELVIN ULRICH,
Appellees.

APPELLEES' MOTION TO AFFIRM JUDGMENT OF DISMISSAL ENTERED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

MOTION TO AFFIRM.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 754.

UNITED STATES OF AMERICA,

Appellant,

v.

A & P TRUCKING CO., a partnership composed of Alex Schub, Aldo Iafrate, and Arthur Clough; and Sol Liebman,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

v.

HOPLA TRUCKING COMPANY, a partnership composed of William Levine and Melvin Ulrich,

Appellees.

APPELLEES' MOTION TO AFFIRM JUDGMENT OF DISMISSAL ENTERED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

MOTION TO AFFIRM.

Appellees move the Court to dismiss the appeal herein on the grounds hereinafter set forth or to affirm the judgment sought to be reviewed on the appeal on the ground that it is manifest the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

/s/ AUGUST W. HECKMAN,
August W. Heckman,
Counsel for Appellees.

/s/ ANTHONY J. CIOFFI,
Anthony J. Cioffi,
Of Counsel.

Opinion Below.

The District Court did not write an opinion. In the Orders which dismiss the informations it is set forth that the defendant partnerships as entities are not subject to criminal liability. The Orders dismissing the informations are set forth in the Appendix, infra, pp. 15, 16.

Jurisdiction.

The jurisdictional requisites are fully set forth in appellant's "Jurisdictional Statement."

Statutes Involved.

The Interstate Commerce Act, Part II, 49 Stat. 543, as amended, provides in pertinent part:

Section 222 (a) [49 U. S. C. 322] (a):

> Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement, or order thereunder, or any term of condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not more than $100.00 for the first offense and not more than $500.00 for any subsequent offense. Each day of such violation shall constitute a separate offense.

Section 203 (a) [49 U. S. C. 303] (a):

> As used in this part—
>
> (1) the term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

18 U. S. C. 835 provides in pertinent part:

> The Interstate Commerce Commission shall formulate regulations for the safe transportation within the limits of the jurisdiction of the United States of explosives and other dangerous articles, * * * which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land * * *
>
> * * * * * *
>
> Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both * * *.

1 U. S. C. 1 provides in pertinent part:

> In determining the meaning of any Act of Congress, unless the context indicates otherwise——
>
> * * * * * *
>
> the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;
>
> * * * * * *

Question Presented.

Whether a partnership is a legal entity separate from the partners for the purposes of criminal liability under 18 U. S. C. 835 and 49 U. S. C. 322 (a).

Statement.

On July 5, 1956, the government filed a criminal information in the United States District Court for the District of New Jersey against A & P Trucking Co., a partnership common carrier by motor vehicle, composed of Alex Schub, Aldo Iafrate, and Arthur Clough; and Sol Liebman, one of its drivers. Said information against the A & P Trucking Company, a partnership, charged the partnership, in count (1), with an offense under 18 U. S. C. 835 by the transportation of dangerous articles in a manner violating regulations of the Interstate Commerce Commission; in count (2), with a violation of 49 U. S. C. 322 (a) and a regulation of the Commission, in that the company permitted the operator to drive without having been physically examined and certified as meeting minimum physical requirements; in count (3), with a violation of 49 U. S. C. 322 (a) and a regulation of the Commission by failing to equip a truck with a fire extinguisher; and in counts (4)-(35), with various operations as a common carrier, without a certificate of public convenience and necessity, in violation of 49 U. S. C. 306 (a) and 322 (a).

On July 6, 1956, the government filed a criminal information in the United States District Court for the District of New Jersey against Hopla Trucking Company, a partnership composed of William Levine and Melvin Ulrich a common carrier by motor vehicle. The two-count information against the Hopla Trucking Company, a partnership, charged the partnership, as an entity, with offenses under 18 U. S. C. 835 in that it transported flammable liquid by motor vehicle in a manner violating I. C. C. regulations.

The government conceded that the individual partners did not have personal knowledge of the facts out of which the violations arose.

On November 14, 1957, counsel for the defendants made a motion to quash the informations in that the statutes 18 U. S. C. 835 (*supra*, p. 3) and 49 U. S. C. 322 (a) (*supra*, p. 2) punishes those, "whoever knowingly violates" (*supra*, pp. 2-3) and that in the present case the defendants are partners in a business enterprise for which the government seeks to hold them criminally responsible for violations committed by their employees without their personal knowledge.

The government proceeded on the theory that the alleged knowledge of the violations by the employees of the defendant co-partnerships is imputed to them.

District Court Judge William F. Smith dismissed the informations on the ground the defendant partnerships as an entity are not subject to criminal liability under sections set forth.

ARGUMENT.

I.

A partnership is not a legal entity separate from the partners for the purposes of criminal liability.

(a) The Court has decided the issue as to "knowledge".

Based upon the cases cited by the government in its jurisdictional statement, it is apparent that the question it raised is unsubstantial. The word "knowingly" is used throughout our criminal law and needs no interpretation.

The legislature intended by the insertion of the word "knowingly" that the element of scienter be present before a person could be subjected to criminal liability for violation of 18 U. S. C. 835 (*supra*, p. 3) and 49 U. S. C. 322 (a) (*supra*, p. 2).

Although a Federal question is raised, the facts upon which it is made to depend have been explicitly decided by the court as to foreclose further argument on the subject, and thus cause the Federal question relied upon to be devoid of any substantial foundation or merit. *Equitable Life Assurance Society* v. *Brown*, 187 U. S. 314. The word "knowingly" was decided in the case of *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337; *St. Johnsbury Trucking Company* v. *United States*, 220 F. 2d 393, 398; *United States* v. *Chicago Express, Inc.*, 235 F. 2d 785; *United States* v. *Illinois Central Railroad*, 303 U. S. 239.

In the *Boyce* case, *supra*, this Court stated:

> "The statute punishes only those who knowingly violate the regulation, 'and that' * * * the presence of the culpable intent is a necessary element of the offense * * *."

(b) Joint stock company.

The case of *United States* v. *Adams Express Co.*, 229 U. S. 381, cited by the government does not apply to the construction of said statutes or to the facts of the case at bar.

The case of *United States* v. *Adams Express Company*, involved a joint stock company, which under the constitution and laws of the State of New York was regarded and treated as a corporation. Under law a joint stock com-

pany is not affected by the death of one of its members or change in its membership. Nor does it possess the unlimited agencies which are attributes of partners. In addition, the interest of a shareholder in a joint stock association is readily transferable and the shareholders enjoy limited liability.

(c) A partnership is not a separate entity.

The Court relied heavily upon the corporate theory in holding the Adams Express Company subject to criminal liability.

There is no finding in the case of *United States* v. *Adams Express Company*, even under the statute involved in that case, that a partnership, as a separate entity and distinguished from a joint stock association, would be subject to the statute involved in that case.

A partnership is not a separate entity but consists of the individual partners.

A partnership has no existence separate from its component members. A partnership is not a legal entity separate and distinct from its partners but is a voluntary association to carry on as co-owners a business for profit. *Dora Neustadter* v. *United Exposition Service Co.*, a partnership, 14 N. J. Super. 484 (1951); *Rudolph Products Co.* v. *Manning*, 83 F. Supp. 857; 176 F. 2nd 190 (C. A.) (1949).

Thus it follows that since a partnership for the purposes of criminal liability is not a separate entity, it is necessary to show that the partners had knowledge of the charges alleged.

In *Boyce Motor Lines* v. *United States*, 342 U. S. 337 (1952), the Court made it clear that an essential element

of the crime under said statute 18 U. S. C. 835 was that Congress manifests a purpose to punish "only those who knowingly" violate the regulations. Knowledge is also an element in order to violate 49 U. S. C. 322 (a).

The government in the present case contends that a partnership is an entity separate from the partners who comprise it. The government seeks to create a fictional entity out of a simple partnership solely for the purpose of eliminating the necessity of proving guilty knowledge in the individual partners. The government fails completely to cite any authority to support its contention.

The government erroneously presumes that once an organization has been established as an entity, irrespective of the requirement of proof of a specific criminal intent in a statute, that vicarious criminal liability would automatically flow. Under Federal law, the decisions have not supported such a contention and there has been a refusal by the courts to extend vicarious criminal responsibility beyond corporations. *United Brotherhood of Carpenters and Joiners* v. *United States*, 330 U. S. 395.

Inasmuch as corporations are concerned, the guilty knowledge of its agents may be imputed to the corporation because a corporation can only act through its agents, and of course, a corporation can not be imprisoned. *Inland Freight Lines* v. *United States*, 191 F. 2d 313.

The criminal law is well established as to the rule that guilt is personal and that as to non-corporate employers, the civil law doctrine of respondeat superior does not apply.

(d) Criminal guilt is personal.

United States v. *Kemble,* 198 F. 2d 889; *Lurding* v. *United States,* 179 F. 2d 419; *Nobile* v. *United States,* 284 F. 253. In *United States* v. *Kemble,* the court states as follows:

> "• • • In the Carpenters case, the Supreme Court reasoned that under the quoted language, liability may not be predicated on a showing which would satisfy merely the requirements of the tort doctrine of *respondeat superior* or even the stricter normal criminal law doctrine which defines the area of corporate criminal responsibility for the acts of officers and agents in the course or scope of employment. • • •
>
> • • • However, even normal criminal responsibility does not extend that far. In this regard the criminal law doctrine is so well settled that its exposition in contemporary judicial opinions is rare. However, some years ago in Nobile *v.* United States, 3 Cir., 1922, 284 F. 253, 255, this court did have occasion to point out that criminal liability of a principal or master for the act of his agent or servant does not extend so far as his civil liability. He cannot be held criminally for the acts of his agent, contrary to his order and without authority, express or implied, merely because it is in the course of his business and within the scope of the agent's employment, though he might be liable civilly." See also *United States* v. *Food and Grocery Bureau,* D. C., S. D. Cal. 1942, 43 F. Supp. 966, 971.

The government in its jurisdictional statement asserts from a mere examination of 1 U. S. C. 1, 49 U. S. C. 303 (a), that a partnership and co-partnerships are entities separate from the partners who comprise them.

The key to 18 U. S. C. 835, 49 U. S. C. 322 (a), is the meaning of the words "whoever" and "knowingly" read in conjunction with the word "co-partnership" in 49 U. S. C. 322 (a) and "partnership" in 1 U. S. C. 1. These statutes do not define that relationship. Consequently, the word "partnership" and "co-partnership," must be given their plain established meaning since there is no contrary congressional intent expressed in 18 U. S. C. 835 and 49 U. S. C. 322 (a).

The requirement of specific criminal intent as an essential element of the crime under 18 U. S. C. 835 and 49 U. S. C. 322 (a) manifests a congressional purpose to punish those who "knowingly violate the regulations."

The government's theory that a partnership is separate from the partners who comprise it is contrary to the very nature of substantive law, both civil and criminal. In criminal law, guilt is personal, and as to non-corporate employers like the appellees herein, there can be no vicarious criminal liability.

The government in its jurisdictional statement failed to offer any authority in substantive law for considering a partnership as an entity separate from the partners who comprise it, for the purpose of criminal liability.

(c) A similar question has already been before this Court.

The government in footnote three (3) page six (6) of its Jurisdictional Statement, sets forth a number of cases allegedly applying to partnerships, which were set forth in the matter of *United States* v. *American Freightways* case (October Term, 1956, No. 265): The Brief submitted by the attorney for the appellee, Martin Werner, Esq., sets

forth in detail cases wherein criminal proceedings could not be brought against a partnership as an entity.

The *American Freightways* decision is not the first decision relative to the words partnership, co-partnership, whoever and knowingly.

The *American Freightways* case has codified the established decision of this court into one single unit relative to the words in question and to the legislative intent as to the interpretation of these Interstate Commerce Commission regulations. In the *American Freightways* case, a partnership, composed of Allan J. Resler and Norman Forman, is identical with the case sub judice. In the *Resler* case, the government, on November 15, 1955, filed a criminal information charging the defendants, *Allan J. Resler and Norman Forman, d/b/a American Freightways Company,* with violation of three regulations of the Interstate Commerce Commission pertaining to transportation of corrosive liquids in interstate commerce under Title 18 U. S. C. Section 835. It was stipulated by an oral bill of particulars by the government that it would not attempt to prove the defendants had direct knowledge of the shipment, but would proceed on the theory that the sum knowledge of their various employees could be imputed to the defendant partnership as an entity. The defendants moved to dismiss the information on the grounds that in criminal law, a partnership is not an entity separate and apart from the partners, and among other things, that the information failed to state a criminal offense against the United States. The District Court, by decision and order dated May 1, 1956, granted defendants' motion to dismiss the information and held:

> "Regardless of the wording of Title 1 U. S. C. Section 1 and Title 49 U. S. C. Section 303 (1) and

despite the various cases cited by the government dealing with the criminal responsibility attaching to unincorporated associations, it is the opinion of this court that a partnership is not a legal entity for purpose of criminal liability herein.

While criminal liability may lie against the individual partners, it may not lie against the partnership as an entity."

The government thereupon filed a notice of appeal to the United States Court of Appeals for the 2nd Circuit, dated May 29, 1956. The notice of appeal to the Supreme Court of the United States was filed in the District Court on May 31, 1956, alleging jurisdiction under 18 U. S. C. 3731. The Supreme Court of the United States, 77 Supreme Court 588, on March 4, 1957, in a per curiam opinion, affirmed the judgment of dismissal of the information by the lower Court.

II.

Congress could convert the offense into a so called "public welfare" offense.

The Court should look at the indicia of legislative intent *U. S.* v. *American Trucking Assn.*, 310 U. S. 534, 542, 544; *U. S.* v. *Dickerson*, 310 U. S. 554, 562.

The statute is plain. It provides that "whoever knowingly".

The offense requires an element of guilty knowledge or other specific mens rea.

If Congress thought the indicated requirement of proof would seriously hamper the effective enforcement of the Interstate Commerce Commission's regulations, the answer

is that Congress was at liberty to fix that by striking out the words "whoever, knowingly". By striking out the words "whoever knowingly", as applied to the regulation, Congress could then have converted the offense into a so-called "Public Welfare offense" requiring no element of guilty knowledge or other specific mens rea.

The best possible intent of the legislature is the language which it has employed—"whoever knowingly". *Boyce Motor Lines* v. *United States*, 342 U. S. 337.

The difficulty of sustaining the burden of proof imposed by the Statutes is no reason for adopting an interpretation which would conflict with the expressed requirement of specific intent. It is solely within the province of Congress to change the nature of the crime under said Statutes. Chief Judge Magruder's concurring opinion in the *St. Johnsburg* case, *supra*,

> "* * * If it be thought that the indicated requirement of proof will seriously hamper effective enforcement of the Interstate Commerce Commission regulations, the answer is that Congress is at liberty to fix that up by striking out 'knowingly'—as applied to violation of regulations of the sort here involved. That is to say, Congress could convert the offense into what sometimes has been called a 'public welfare offense,' requiring no element of guilty knowledge or other specific *mens rea*, by providing that whoever, by himself or by agent, transports explosives, poison gas, flammable solids, or other dangerous commodities without the safeguards which may be prescribed by a lawful regulation of the Interstate Commerce Commission, shall be guilty of a public offense and subject to penalty. See the discussion in Morissette *v.* United States (1952), 342 U. S. 246, 252-260, 72 S. Ct. 240, 96 L. Ed. 288."

As far as criminal responsibility is concerned, a partnership is identically the same as an individual employer, except that, instead of one individual conducting business under a trade name, it is two or more individuals doing so. Following this line of reasoning, it is obvious the government cannot contend that an individual doing business under a trade name could be charged with a crime as an entity separate from the individual himself where the government similarly lacked evidence of guilty knowledge in that individual. It thus follows that the individuals who comprise a partnership and who conduct their business under a partnership name, cannot be found guilty where there is a lack of evidence of guilty knowledge on the part of those individuals. If it were otherwise, the individual partners who were proven to have guilty knowledge, could avoid imprisonment by claiming that the partnership as an entity is liable for the violation and that they are not personally liable. The statute requires proof of guilty knowledge only on the part of the partners in order to convict the partnership. The government admits that it has no such proof.

Conclusion.

Wherefore, it is respectfully requested that the order of the United States District Court for the District of New Jersey dismissing the informations be affirmed.

Respectfully submitted,

/s/ August W. Heckman,
August W. Heckman,
Counsel for Appellees.

/s/ Anthony J. Cioffi,
Anthony J. Cioffi,
Of Counsel.

APPENDIX.

Order of July 5, 1956, Dismissing Criminal Information.

United States District Court

DISTRICT OF NEW JERSEY.

Criminal No. 252-56.

UNITED STATES OF AMERICA

v.

A & P TRUCKING CO., a partnership composed of ALEX SCHUB, ALDO IAFRATE, and ARTHUR CLOUGH; and SOL LIEBMAN, Defendants.

This matter having come before the Court upon motion by the defendant A & P Trucking Co., a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant, and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the A & P Trucking Co., a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under the section set forth, it is on this 13th day of November, 1957,

ORDERED, that the criminal information filed with the Clerk of this Court on July 5, 1956, be and the same is hereby dismissed.

/s/ WILLIAM F. SMITH,
United States District Judge.

We consent to the form of the foregoing Order.

/s/ AUGUST W. HECKMAN
August W. Heckman
Attorney for Defendant.

/s/ ANTHONY J. CIOFFI
Anthony J. Cioffi
(Of Counsel)

Order of July 6, 1956, Dismissing Criminal Information.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY.

Criminal No. 261-56.

UNITED STATES OF AMERICA

v.

HOPLA TRUCKING COMPANY, a partnership composed of WILLIAM LEVINE and MELVIN ULRICH.

This matter having come before the Court upon motion by the defendant, Hopla Trucking Company, a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant, and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the Hopla Trucking Company, a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under the section set forth, it is on this 13th day of November, 1957,

ORDERED that the criminal information filed with the Clerk of this Court on July 6, 1956, be and the same is hereby dismissed.

/s/ WILLIAM F. SMITH,
United States District Judge.

We consent to the form of the foregoing Order.

/s/ AUGUST W. HECKMAN
August W. Heckman
Attorney for Defendant.

/s/ ANTHONY J. CIOFFI
Anthony J. Cioffi
(Of Counsel)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 32.

UNITED STATES OF AMERICA,
Appellant,

vs.

A & P TRUCKING CO., a partnership composed of ALEX SCHUB, ALDO IAFRATE, and ARTHUR CLOUGH; and SOL LIEBMAN,
Appellees.

UNITED STATES OF AMERICA,
Appellant,

vs.

HOPLA TRUCKING COMPANY, a partnership composed of WILLIAM LEVINE and MELVIN ULRICH,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

BRIEF FOR THE APPELLEES.

AUGUST W. HECKMAN,
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Jersey City 6, New Jersey.

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Cases Cited.

FEDERAL STATUTES.

FEDERAL RULES OF CIVIL PROCEDURE.

New Jersey Statute.

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Other Authorities.

IN THE

Supreme Court of the United States

OCTOBER TERM 1958.

No. 32.

UNITED STATES OF AMERICA,

Appellant,

v.

A & P TRUCKING CO., a partnership composed of Alex Schub, Aldo Iafrate, and Arthur Clough; and Sol Liebman,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

v.

HOPLA TRUCKING COMPANY, a partnership composed of William Levine and Melvin Ulrich,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

BRIEF FOR THE APPELLEES.

Opinion Below.

The District Court did not write an opinion. In the Orders dismissing the informations, the court held that the Defendant partnerships as entities are not subject to criminal liability. The Orders dismissing the informations are set forth at R. 19 and R. 27.

Jurisdiction.

The Jurisdictional requirements are set forth in the government's brief pages 1 and 2.

Question Presented.

Whether a partnership is a legal entity separate from the partners for the purpose of criminal liability under the following statutes: (1) Section 222 (a) of the Motor Carrier Act (provides penalty for any person knowingly and willfully violating certification requirements and of I. C. C. motor carrier regulations); and (2) 18 U. S. C. 835 (provides penalty for whoever knowingly violates regulations governing the safe transportation of explosives and other dangerous articles).

Statutes Involved.

1. The Interstate Commerce Act, Part II (Motor Carrier Act of 1935, 49 Stat. 543, as Amended), provides in pertinent part:

Section 222 (a) 49 U. S. C., Supp. V, 322 (a):

> Any person knowingly and willfully violating any provisions of this part, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate permit, or license, for which a penalty is not otherwise herein provided, shall upon conviction thereof, be fined not less than $100.00 nor more than $500.00 for the first offense and not less than $200.00 nor more than $500.00 for any subsequent offense. Each day of such violation shall constitute a separate offense.

Section 206 (a) 49 U. S. C. 306 (a):

> (1) Except as otherwise provided in this section and in section 210 a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: • • •

Section 203 (a) 49 U. S. C. 303 (a):

> As used in this part • • •
>
> (1) the term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

2. 18 U. S. C. 835 provides in pertinent part:

> The Interstate Commerce Commission shall formulate regulations for the safe transportation within the limits of the jurisdiction of the United States of explosives and other dangerous articles • • • which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land • • •.
>
> • • •
>
> Whoever knowingly violates any such regulation shall be fined not more than $1,000.00 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000.00 or imprisoned not more than ten years or both.

3. 1 U. S. C. 1 provides in pertinent part:

> In determining the meaning of any Act of Congress, unless the context indicates otherwise • • •

* * *

the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

* * *

4. Section 207 (a) 49 U. S. C. 307 (a):

Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied; * * *[1]

Statement.

On July 5, 1956, an information was filed against A. & P. Trucking Co., a partnership composed of Alex Schub, Aldo Iafrate, and Arthur Clough; and Sol Liebman, in count 1 with violations of Interstate Commerce Commission regulations pertaining to transportation of dangerous articles in interstate commerce with respect to a single shipment on or about March 18, 1954, under 18 U. S. C. 835; in count 2, with a single violation of Section 222(a) of the Motor Carrier Act of 1935, *supra*, alleging that on or

[1] Section 207 (a) 49 U. S. C. 307 (a), presented for the first time and was not part of the original statutes involved.

about March 18, 1954 the company permitted the operator to drive without having been physically examined and certified in conformance with I. C. C. regulations; in count 3, with a violation of Section 222(a) on or about March 18, 1954 for failure to equip a truck with a fire extinguisher with respect to a single shipment; and in counts 4-35, with violating Section 222(a) relative to having a certificate of convenience and necessity required by section 206(a); (R. 1-15).

The two-count information, against Hopla Trucking Company, a partnership composed of William Levine and Melvin Ulrich, filed July 6, 1956, charged the partnership with violations of regulations of the Interstate Commerce Commission of two shipments 11 Oct. 1955 pertaining to the transportation of corrosive liquids in interstate commerce under 18 U. S. C. 835 (R. 23-24).

On November 14, 1957, counsel for the defendants made a motion to quash the informations in that Section 222(a) 49 U. S. C. Supp. V. 322(a) (*supra*, p. 2) punishes any • • • person knowingly and willfully violating • • • and 18 U. S. C. 835 (*supra*, p. 3) "whoever knowingly violates."

The government conceded that the individual partners did not have personal knowledge of the facts out of which the violations arose.

It was argued on briefs in the United States District Court, District of New Jersey, by Anthony J. Cioffi, of Counsel for August W. Heckman, Esq., attorney for the defendants, that a Partnership is not a legal entity separate from the partners for the purposes of criminal liability and that knowledge of an agent or employee of the partner-

ship is not imputable to the partnership as an entity so as to hold the employer criminally responsible under the statutes in question.

The district Court by Order dismissed the informations on November 13, 1957, holding that the Defendant Partnerships as entities are not subject to criminal liability (R. 27-28).

A notice of appeal to this court was filed in the United States District Court for the District of New Jersey on December 9, 1957, alleging Jurisdiction under 18 U. S. C. 3731. This Court noted probable jurisdiction on March 31, 1958.

Summary of Argument.

1. The key to the construction of Section 222 (a) of the Motor Carrier Act (*supra*, p. 2) is the meaning of the words "person", "knowingly", and "willfully" read in conjunction with Section 203 (a) of the Motor Carrier Act (*supra*, p. 3) with the word "copartnership".

2. The key to the construction of 18 U. S. C. 835 (*supra*, p. 3), is the meaning of the words "whoever", and "knowingly" read in conjunction with the word "partnership" in 1 U. S. C. 1 (*supra*, p. 3-4).

Section 203 (a) of the Motor Carrier Act and 1 U. S. C. 1 does not define the relationship. Consequently the word "copartnership" and "partnership" must be given their plain established meaning since there is no contrary congressional intent expressed in Section 222 (a) of the Motor Carrier Act or in 18 U. S. C. 835.

Both these statutes deal with violations of Interstate Commerce Regulations and Congress has used the word "knowingly"[2] and "willfully"[3] in said statutes. It has set forth a state of mind essential for responsibility and has removed the statutes from the classification of offenses familiarly known as offenses malum prohibitum or public welfare offenses. *U. S.* v. *Chicago Express Inc.*, 235 F. 2d 785 (C. A. 7, 1956). Since both of the statutes require culpable intent they will be discussed together.

The requirement of a specific criminal intent as an essential element of the crime under 18 U. S. C. 835 manifests a Congressional purpose to punish "only those who knowingly violate the regulations." *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337 (p. 342). The government asserts from a mere examination of 1 U. S. C. 1, and Sec. 203 (a), that a partnership is an entity separate from the partners who comprise it. Such contention is contrary to the substantive nature of a partnership in both civil and criminal law and conflicts with the well-established principles regarding vicarious criminal responsibility. In criminal law guilt is personal and as to non-corporate employers, such an appellee, there can be no vicarious criminal liability. The adoption of the government's construction of 18 U. S. C. 835 and Sec. 222 (a) Motor Carrier Act, would make wide-sweeping changes in the substantive law of partnership without any statutory basis therefor.

3. A partnership is not a legal entity for the purposes of criminal liability under 18 U. S. C. 835 and Section 222 (a) Motor Carrier Act. The cases cited by the govern-

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[2] Mens Rea—Intent and Capacity—Chap. 38. Clark and Marshall, Crimes —Fourth Edition—Kearny (1940), sections 40, 41.

[3] Willfulness—Section 42—id.

ment do not apply either to the construction of said statutes or to the facts in the case at bar.

The government has failed to offer any authority in substantive law for considering a partnership as an entity separate from the partners who comprise it. Rule 17(b) of the Federal Rules of *Civil* Procedure is limited solely to the procedural purpose of facility of civil suit. *Koons* v. *Kaiser*, 91 F. Supp. 511 (S. D. N. Y.). Similarly, the procedural treatment of a partnership as an entity under the Bankruptcy Act does not change the substantive nature of that relationship. *Mason* v. *Mitchell*, 135 F. 2d 599 (C. A. 9).

The cases treating labor unions and trade associations as entities are not applicable to partnerships since unincorporated associations of that type partake of various characteristics of corporations. *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344.

The case of *United States* v. *Adams Express Co.*, 229 U. S. 381, involved a joint stock company, which, under the constitution and laws of the State of New York, was regarded as a corporation. This court relied heavily upon such fact in holding the Adams Express Company amenable to criminal liability in that case. In addition, the statute involved in the *Adams* case differed so substantially from the statutes in question as to afford no support for the government's position in the case at bar.

The government erroneously presumes that once an organization has been established as an entity, irrespective of the requirement of proof of a specific criminal intent in a statute, that vicarious criminal liability would automatic-

ally flow. The government fails to cite any authority for this proposition. Quite to the contrary, the decisions under federal law have refused to extend vicarious criminal responsibility beyond corporations. *Brotherhood of Carpenters and Joiners* v. *U. S.*, 330 U. S. 395.

The law in relation to partnerships is well-settled. A partnership is not a separate entity but is the individual partners. The only way to prove criminal intent in a partnership is to prove that the individual partners had the guilty knowledge required by the criminal statute involved herein.

4. The government seeks to create a fictional entity out of a simple partnership solely for the purpose of eliminating the necessity of proving guilty knowledge in the individual partners, so that it can attribute to them the vicarious criminal responsibility imposed upon a corporation. The government has conceded that the individual partners had no knowledge of the alleged violations and the case at bar was dismissed upon such concession by the government.

Only Congress can change the nature of the crime under Sec. 222 (a) of the Motor Carrier Act and 18 U. S. C. 835 by eliminating the element of a specific criminal intent. *St. Johnsbury Trucking Company* v. *United States*, 220 F. 2d 393, 398 (C. A. 1). The government may not accomplish such a change by a judicial interpretation.

The criminal responsibility of a partnership is identically the same as that of an individual conducting business under a trade name except that instead of one individual doing business under a trade name it is two or more doing so. Otherwise, individual partners could always set up the defense that the partnership entity is criminally

liable and thus avoid imprisonment. The government's assertion that the partnership can only be punished by a fine as to 18 U. S. C. 835 is clearly contrary to established criminal law. Furthermore, it is obvious that as to Sec. 222 (a) Motor Carrier Act (government brief pp. 10-11) if a supposed partnership entity did not have sufficient assets to satisfy a fine, the government would then surely proceed against the assets of the individual partners for satisfaction of the balance.

Because of the nature of a partnership, a conviction of the partnership would carry the stigma of a criminal conviction against the partners themselves. Under the circumstances, the individual partners, who had no knowledge of the alleged violations are placed in the anomalous position of attempting to defend their good names without even the safeguard of being directly named as defendants.

5. The question involving as to whether criminal proceedings could not be brought against a partnership as an entity was before this court in *United States* v. *American Freightways Co.*, 352 U. S. 1020 (1957).

This brief in essence sets forth the arguments propounded by Martin Werner, Esq., attorney for American Freightways.

When the American Freightways case was before this Court, an equally divided Court affirmed the District Court's order dismissing an information returned against a partnership (Governments Brief, pp. 12, 23, 24).

The District Court in the American Freightways case, by decision and order dated May 1, 1956, granted defendants' motion to dismiss the information against the partnership as an entity and held:

"Regardless of the wording of Title 1 U. S. C. Section 1 and Title 49 U. S. C. Section 303 (1) and despite the various cases cited by the government dealing with criminal responsibility attaching to unincorporated associations, it is the opinion of this court that a partnership is not a legal entity for purposes of criminal liability herein.

While criminal liability may lie against the individual partners, it may not lie against the partnership as an entity."

In a per curiam opinion, this Court affirmed the judgment of dismissal of the information by the lower Court.

ARGUMENT.

POINT I.

A partnership is not a legal entity separate from the partners for purposes of criminal liability under Section 222(a) Motor Carrier Act and 18 U. S. C. 835, which "punishes only those who knowingly violate the regulations."

(a) This court has decided the issue as to "knowledge."

In an appeal to this Court under 18 U. S. C. 3731, from an order of a district court dismissing an indictment or information, the jurisdiction of this Court is limited to a construction of the sections in question, i. e., Section 222 (a), Motor Carrier Act and 18 U. S. C. 835. *United States* v. *Hood*, 343 U. S. 148; *United States* v. *Beacon*

Brass Co., Inc., 344 U. S. 43; *United States* v. *Carroll*, 345 U. S. 457.[4]

A necessary element of the violation is the guilty knowledge on the part of the accused, and in order to arrive at the real intent of Congress in enacting that section the term "whoever" must be read in conjunction with the word "knowingly". This was made clear in the cases of *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337; *United States* v. *Chicago Express, Inc.*, 235 F. 2d 785 (C. A. 7) and *St. Johnsbury Trucking Company* v. *United States*, 220 Fed. 2d 393 (C. A. 1). In the *Boyce* case, *supra*, this Court stated (p. 342):

> "The statute punishes only those who knowingly violate the Regulation" and that "* * * the presence of culpable intent * * *" is "* * * a necessary element of the offense. * * *"

(b) A partnership is not a separate entity.

In the absence of a clear expression of Congressional intent to the contrary, we must give the word "partnership" its plain ordinary meaning. This is especially so in interpreting a criminal statute which must be strictly construed in favor of the accused.[5]

There can be no doubt that the common law was based on the aggregate rather than the entity theory of the nature of a partnership. This is stated even by sponsors of the

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[4] See Sutherland, *Statutes and Statutory Construction* (3d Ed., 1943), vol. 3, Secs. 5303, 5304, *et seq.*

[5] Cf. *United States* v. *A & P Trucking Corp.*, 113 F. Supp. 549 (D. C. N. J.), involved an interpretation of the regulations promulgated under 18 U. S. C. 835. The court ruled that canons of construction applicable to statutes are equally applicable to such regulations.

entity theory. See Crane, *Partnership* (2nd Ed. 1952), pp. 9-12. Unlike a corporation, a partnership at common law has no legal existence aside from the members who compose it.[6]

It is equally clear that the Uniform Partnership Act adopted the common law or aggregate theory of a partnership. This is borne out by the case of *Helvering* v. *Smith*, 90 F. 2d 590 (C. A. 2), wherein the court, in discussing the substantive nature of a partnership stated (p. 591):

> "The Uniform Partnership Act which is the law of New York (Partnership Law N. Y. (Consol. Laws N. Y. c. 39)) did not, as the taxpayer supposes, make the firm an independent juristic entity."

It is no coincidence that in federal criminal cases dealing with criminal acts committed for the benefit of partnerships the prosecution proceeded with an indictment of the individual partners. The state court decisions are in accord with appellee's position as to the nature of a partnership in criminal law. In *People* v. *Schomig*, 74 Cal. App. 109; 239 P. 413 (1925), the defendant contended that an act was unconstitutional for the reason that penalties were prescribed in the act for the punishment of individuals and corporations but none as to partnerships and that therefore partnerships were exempt from punishment altogether. The Court stated (239 P. 413) at p. 414:[7]

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[6] Hence, the definition of a partnership under the Uniform Partnership Act (7 U. L. A., Section 6), reads: "An Association of two or more persons to carry on as co-owners a business for profit."

[7] *Gordon* v. *United States*, 347 U. S. 909; *United States* v. *Cohn*, 128 Fed. 615; (S. D. N. Y.); *People* v. *Maljan*, 167 P. 547.

"In reference to copartnerships it will be noted that penalties are prescribed by the act for the punishment of individuals and corporations, but none as to copartnerships. We are of the opinion, however that this omission does not affect the constitutionality of said act for the reason that in so far as criminal responsibility is concerned, a partnership is not recognized as a person separate from its component members in the sense that a corporation is a separate entity (People *v.* Maljan, 34 Cal. App. 384 (167 Pac. 547)), and therefore cannot commit a crime. California Jurisprudence (Vol. 20, p. 680) states the rule in the following language: 'In most respects a partnership is but a relation, with no legal being as distinct from the members who comprise it. It is not a person, either natural or artificial. Thus a partnership as such, cannot be guilty of crime, but guilt attaches to the delinquent member or members' * * *. True, it has been held that a partnership may be regarded as a separate entity for some purposes (citations omitted), but those purposes are entirely disassociated with the question of responsibility for the commission of criminal acts; *and our attention has not been called to any case wherein a copartnership has been treated as a 'person' and thus subjected to punishment for committing a criminal act.* * * * " (Emphasis supplied.)

It does not follow, though, from the fact that the partnership itself as a separate entity may not be punished, that criminal acts committed through the operation thereof may not be made the subject of criminal prosecutions, for it is well settled that the delinquent members of the firm are responsible for the acts of copartnership, and may be proceeded against for criminal offenses committed as copartners (31 Cor. Jur., sec. 235, p. 692; 20 R. C. L., sec. 131, p. 919)."

It can indeed be stated that the dearth of authority for treating a partnership as a "person" in criminal law bespeaks the established status of the law in that regard.

New Jersey has adopted the uniform partnership law. N. J. S. A. 42:1-6, Section 1, defines a partnership as follows:

> "A partnership is an association of two or more persons to carry on as co-owners a business for profit."

Hopla Trucking Company is a New Jersey Partnership.

These cases in New Jersey do not accept the entity theory of partnership. Guilt is personal to the individual partners and not to the partnership as an entity.

In the case of *Faulkner* v. *Whitaker*, 15 N. J. L. 438 (S. Ct. 1836), it was held that the individuals composing a partnership could be arrested but the firm cannot.

A partnership cannot make an affidavit; and an affidavit signed in a partnership name by one of the partners is insufficient and invalid. *Gaddis* v. *Durashy*, 13 N. J. L. 324 (1833).

A "Partnership" is not a legal entity distinct from partners but is a voluntary association of the partners to carry on as co-owners a business for profit. In New Jersey partnerships have no existence separate from its component members. *Neustadter* v. *United Exposition Service Co.*, 14 N. J. Super. 484 (1951); *X-L Liquors* v. *Taylor*, 17 N. J. 444 (1955), which case holds that the Common Law did not recognize the separate existence of partnerships, and required that all legal matters be maintained by and against the individual partners.

Appellee most strongly maintains that it is unreasonable to suppose that Congress intended to make widesweeping changes in the substantive law of partnership, in derogation of the common law nature of partnership and in direct conflict with the decisions under the Uniform Partnership Act which does not expressly and clearly dictate that result.

The Court relied heavily upon the corporate theory in holding the *Adams Express Co.*, (229 U. S. 381), subject to criminal liability.

There is no finding in the case of *United States* v. *Adams Express Co.*, even under the statute involved in that case, that a partnership, as a separate entity and distinguished from a joint stock association, would be subject to the statute involved in that case.

A partnership is not a separate entity but consists of the individual partners.

A partnership has no existence separate from its component members. A partnership is not a legal entity separate and distinct from its partners but is a voluntary association to carry on as co-owners a business for profit. *Neustadter* v. *United Exposition Service Co.*, 14 N. J. Super. 484 (Ch. 1951); *Randolph Products Co.* v. *Manning*, 83 F. Supp. 857; 176 F. 2nd 190 (C. A. 3) (1949).

Thus it follows that since a partnership for the purposes of criminal liability is not a separate entity, it is necessary to show that the partners had knowledge of the charges alleged.

In *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337 (1952), the Court made it clear that an essential element of the crime under said statute 18 U. S. C. 835 was

that Congress manifests a purpose to punish "only those who knowingly" violate the regulations. Knowledge is also an element in order to violate Sec. 222 (a) Motor Carrier Act. *United States* v. *Chicago Express, Inc.* (*supra*).

The government in the present case contends that a partnership is an entity separate from the partners who comprise it. The government seeks to create a fictional entity out of a simple partnership solely for the purpose of eliminating the necessity of proving guilty knowledge in the individual partners. The government fails completely to cite any authority to support its contention.

The government erroneously presumes that once an organization has been established as an entity, irrespective of the requirement of proof of a specific criminal intent in a statute, that vicarious criminal liability would automatically flow. Under Federal law, the decisions have not supported such a contention and there has been a refusal by the courts to extend vicarious criminal responsibility beyond corporations. *Brotherhood of Carpenters* v. *U. S.*, 330 U. S. 395.

Inasmuch as corporations are concerned, the guilty knowledge of its agents may be imputed to the corporation because a corporation can only act through its agents, and of course, a corporation can not be imprisoned. *Inland Freight Lines* v. *United States*, 191 F. 2d 313.

(c) Joint stock company.

The case of *United States* v. *Adams Express Co.*, 229 U. S. 381, cited by the government does not apply to the construction of said statutes or to the facts of the case at bar.

The case of *United States* v. *Adams Express Co.*, involved a joint stock company, which under the constitution and laws of the State of New York was regarded and treated as a corporation. Under law a joint stock company is not affected by the death of one of its members or change in its membership. Nor does it possess the unlimited agencies which are attributes of partners. In addition, the interest of a shareholder in a joint stock association is readily transferable and the shareholders enjoy limited liability.

(d) Criminal guilt is personal.

The criminal law is well established as to the rule that guilt is personal and that as to non-corporate employers, the civil law doctrine of respondeat superior does not apply.

United States v. *Kemble*, 198 F. 2d 889; *Lurding* v. *United States*, 179 F. 2d 419; *Nobile* v. *United States*, 284 F. 253. In *United States* v. *Kemble*, the court states at p. 892 as follows:

> "• • • In the Carpenters case, the Supreme Court reasoned that under the quoted language liability may not be predicated on a showing which would satisfy merely the requirements of the tort doctrine of *respondeat superior* or even the stricter normal criminal law doctrine which defines the area of 'corporate criminal responsibility for the acts of officers and agents in the course or scope of employment. • • • '" and at p. 893:
>
> • • • However, even normal criminal responsibility does not extend that far. In this regard the criminal law doctrine is so well settled that its exposition in contemporary judicial opinions is rare.

> However, some years ago in Nobile *v.* United States, 3 Cir., 1922, 284 F. 253, 255, this court did have occasion to point out that 'Criminal liability of a principal or master for the act of his agent or servant does not extend so far as his civil liability. He cannot be held criminally for the acts of his agent, contrary to his order and without authority, express or implied, merely because it is in the course of his business and within the scope of the agent's employment, though he might be liable civilly.' See also *United States* v. *Food and Grocery Bureau,* D. C., S. D. Cal. 1942, 43 F. Supp. 966, 971."

The government asserts from a mere examination of 1 U. S. C. 1 and Sec. 203 (a) Motor Carrier Act, that a partnership and co-partnerships are entities separate from the partners who comprise them.

The key to 18 U. S. C. 835, Section 222 (a) Motor Carrier Act, is the meaning of the words "whoever" and "knowingly" read in conjunction with the word "co-partnership" in Section 203 (a) Motor Carrier Act and "partnership" in 1 U. S. C. 1. These statutes do not define that relationship. Consequently, the word "partnership" and "co-partnership," must be given their plain established meaning since there is no contrary congressional intent expressed in 18 U. S. C. 835 and Section 222 (a) Motor Carrier Act.

The requirement of specific criminal intent as an essential element of the crime under 18 U. S. C. 835 and Sec. 222 (a) Motor Carrier Act manifests a congressional purpose to punish those who "knowingly violate the regulations."

The government's theory that a partnership is separate from the partners who comprise it is contrary to the very

nature of substantive law, both civil and criminal. In criminal law, guilt is personal, and as to non-corporate employers like the appellees herein, there can be no vicarious criminal liability.

The government in its brief failed to offer any authority in substantive law for considering a partnership as an entity separate from the partners who comprise it, for the purpose of criminal liability.

POINT II.

The cases cited by the government dealing with the personification of a partnership in civil law and those dealing with unincorporated associations and joint stock associations are not applicable to the case at bar.

While a partnership may be considered a legal entity for some limited civil procedural purposes, this concept has never been extended to the criminal law. The government, in its brief (p. 19), cites a Federal Rule of Civil Procedure and a section of the Bankruptcy Act as support for its contention that a partnership may be treated as a legal entity in criminal law exactly like a corporation.

Rule 17(b) of the Federal Rules of Civil Procedure permits a partnership to sue or be sued in the firm name. That Rule 17(b) is merely procedural and does not change the substantive law particularly with respect to criminal applicability is made clear in the case of *Koons* v. *Kaiser*, 91 F. Supp. 511 (S. D. N. Y.).

In that case five partners, three of whom resided in New York and two of whom resided in other states, brought a civil action in the Federal District Court for the South-

ern District of New York, basing jurisdiction on diversity of citizenship, against an individual who resided in California and a California and Nevada corporation, both of which maintained principal offices in California. The court held that the venue was improperly laid. In answering the contention of the plaintiff partners that the venue was proper since the residence of the partnership was in the Southern District of New York as its principal place of business was located there, the court stated (p. 516):

> "Rule 17(b) of the Federal Rules of Civil Procedure requires an examination of the law of the state to ascertain whether a partnership is a legal entity with a residence separate and apart from those of the partners. Section 222-a of the New York Civil Practice act permits a suit by and against a partnership in its partnership name, but it is clear that it was never intended to make a New York partnership a separate legal entity apart from that of the partners. It was merely a device to facilitate partnership litigation. Indeed, the Judicial Council which had recommended the adoption of Section 222-a stated in its Eleventh Annual Report at p. 233: 'It is assumed in the discussion of the validity of the recommended amendments, that the enactment of recommended section 222-a permitting suits by and against a partnership in the partnership name, together with present sections 12 and 21 of the Partnership Law [McK. Consol. Laws, c. 39] permitting partnerships to hold real property in the partnership name will not be held to have the effect of converting partnerships into legal entities having a separate existence from that of the partners. Such effect is believed to be unlikely.'
>
> See Caplan *v.* Caplan, 1935, 268 N. Y. 445, 198 N. E. 23, 101 A. L. R. 1223; William *v.* Hartshorn,

> 1946, 296 N. Y. 49, 69 N. E. 2d 557 (decided by the Court of Appeals after the enactment of Section 22(a)). * * *"

It is very significant to note that appellee, A. & P. Trucking Company, is a New York partnership.

The second example of so-called "personification of the partnership" advanced by the government is the treatment of a partnership as a legal entity in bankruptcy. The government cites *Liberty National Bank* v. *Bear,* 276 U. S. 215 (government brief p. 19), and *Meek* v. *Centre County Banking Co.,* 268 U. S. 426 (government brief p. 19), as authority for this proposition. Section 5 of the Bankruptcy Act was procedural and did not change the substantive law of partnership. This appears from the opinion in a recent case interpreting Section 5 of the Bankruptcy Act, namely *Mason* v. *Mitchell,* 135 F. 2d 599 (C. A. 9).

In *Mason* v. *Mitchell, supra,* the court affirmed a dismissal of a petition in bankruptcy on the ground that a "partnership is not bankrupt so long as anyone of the members who compose it is individually solvent." The court answered appellant's contention, that for bankruptcy purposes a partnership is a separate entity and thus the solvency of any partner is immaterial to the solvency of the partnership by stating in its opinion (pp. 600-601):

> "It is also urged that although the issue here has not been passed upon since the adoption of the 1938 Act, the most recent case of the Supreme Court on the subject, Liberty National Bank *v.* Bear, 276 U. S. 215, 48 S. Ct. 252, 72 L. Ed. 536, reveals a judicial adherence to the 'entity theory' which likewise compels the conclusion that the assets of a partner are not to be included in the determination of the solvency of a partnership.

> We do not agree with appellant's contention.
>
> First, the legal fiction of separate entity as applied to corporations or partnerships is purely a linguistic device utilized for conceptual convenience. It is not a premise to be reasoned from, but merely a shorthand statement of a conclusion. * * * Further, in answer to appellant's argument that Sec. 5 subs. a and b establish Congressional adoption of the 'entity' theory, it may be pointed out in Sec. 5, subs. c, i, and j are as clearly predicated upon the 'aggregate' theory * * *
>
> Second, the amendments made to Sec. 5 in the 1938 Act do not reflect an intent by Congress to work any far reaching changes in the substantive law of partnership. As was stated in House Report 1409, June 29, 1937, 75th Cong. 1st Sess., one of the purposes of the Act was to 'provide a more workable partnership section. * * *'
>
> * * * the changes in Secs. 5 and 18 were procedural in nature affording a more expeditious practice."

It is clear that the treatment of a partnership as a separate entity for limited *procedural* purposes does *not* change the *substantive* nature of that relation even in *civil* law.

In an attempt to identify simple partnerships with large collective bodies such as labor unions and trade associations, the government cites several cases in its brief wherein such associations have been treated as legal entities. The attempted analogy to the case at bar is erroneous for two reasons. First, unincorporated associations of the type involved in the cases cited are more closely comparable to corporations than to partnerships. Secondly, even where such associations are treated as entities the doctrine of *respondeat superior* does not apply insofar,

as charging vicarious criminal responsibility to the association for the acts of its agents.

In *United Mine Workers of America* v. *Coronado Co.*,[8] this Court by Chief Justice Taft, in holding a labor union amenable to *civil* suit, stated the reasons for treating a labor union as a separate entity (pp. 385, 388-389):

> "The membership of the union has reached 450,000. The dues received from them for the national and district organizations make a very large annual total, and the obligations assumed in traveling expenses, holding of conventions, and general overhead cost, but most of all in strikes, are so heavy that an extensive financial business is carried on, money is borrowed, notes are given to banks, and every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and none is more power centered in the governing executive bodies. * * *
>
> It would be unfortunate if an organization as great power as this International Union has in the raising of large funds and in directing the conduct of 400,000 members in carrying on, in a wide territory, industrial controversies and strikes, out of which so much unlawful injury to private rights is possible, could assemble its assets to be used therein free from liability for injuries by torts committed in the course of such strikes. To remand persons injured to a suit against each of the 400,000 members to recover damages and to levy on his share of the strike fund, would be to leave them remediless. * * *"

The reasons for this rule of necessity are absent when we examine the nature of a partnership.

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[8] 259 U. S. 344.

Nor is the holding of this Court in *Brown* v. *United States*[9] of any aid to the government in its efforts to create fictional entity in the case of a partnership. In that case, strongly relied upon by the government, this Court held that a subpoena in a federal grand jury investigation under the Sherman Act could be directed to a manufacturer's association in its association name. The language quoted in the government's brief (pp. 20-21), must be taken in its proper perspective lest the wrong conclusions be drawn since this Court specifically stated (p. 142):

> "• • • While the subpoena *duces tecum* directed to the officer in possession of the documents would have been good, and perhaps preferable, the matter is not one of substance, but purely of procedure, and we entertain no doubt that the subpoena here directed to the association and served on such officer is valid."

The case of *United States* v. *Adams Express Co.*,[10] upon which the government relies so heavily, involved a joint stock association. This Court, as a basis for its decision that the Adams Express Company could be proceeded against in the company name for a violation *punishable by a fine*, discussed the corporate nature of joint stock associations. Justice Holmes stated in his opinion (p. 390):

> "• • • It is to be observed that the structure of the company under the laws of New York is such that a judgment against it binds only the joint property, National Bank *v.* Van Derwerker, 74 N. Y. 234, and that it has other characteristics of separate being. Westcott *v.* Fargo, 61 N. Y. 542. Matter of

[9] 276 U. S. 134.

[10] 229 U. S. 381.

> Jones, 172 N. Y. 575. Hibbs *v.* Brown, 190 N. Y. 167. Indeed Article VIII of the Constitution of the State, after providing that the term corporations * * * shall be construed to include all joint stock companies etc., having any of the powers or privileges of corporations not possessed by individuals or partnerships, as these companies do, Matter of Jones, 172 N. Y. 575, 579, goes on to declare that all corporations may sue and be sued 'in like cases as natural persons.' We do not refer to the law of New York in order to argue that by itself it would suffice to make applicable the principle of Liverpool & London Life & Fire Ins. Co. *v.* Oliver, 10 Wall. 566. We refer to it simply to show the semi-corporate standing that these companies already had locally as well as in the popular mind, and thus that the action of Congress was natural and to be expected, if we take its words to mean all that by construction they import."

Section 4, Article 10, of the Constitution of the State of New York, formerly Article 8, Section 3, reads as follows:

> "The term corporations as used in this section, and in sections 1, 2 and 3 of this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons."

The treatment of the Adams Express Company as a legal entity was natural when one considers its similarity to a corporation. Unlike a simple partnership, a joint stock association is not affected by the death of one of its members or change in its membership. Nor does it possess the

unlimited agency that is the attribute of partners. In addition, the interest of a shareholder in a joint stock association is readily transferable and the shareholders of the Adams Express Company enjoyed limited liability. Comparison of these attributes to the characteristics of a simple partnership such as appellee points up the absurdity of the government's attempted analogy.

There is no finding in the case of *United States* v. *Adams Express Company*,[11] even under the statute involved in that case, that a partnership, as a separate entity and distinguished from a joint stock association, would be subject to criminal liability in that case. The information in the case at bar charges a violation under Title 18, U. S. C., Section 835 and Section 206(a) Motor Carrier Act. The said information does not charge a violation of the statute which was involved in the case of *United States* v. *Adams Express Company*.

Secondly, the defendants in the case at bar are not a joint stock association but are partnerships consisting of partners against whom informations had been filed for alleged violations and dismissed on a motion to quash the information.

It is important to emphasize that the government has sought to liken a partnership to a corporation in order to establish a partnership as a separate entity. In the course of its attempted analogy the government has cited several cases dealing with unincorporated associations. Appellee believes it has demonstrated that the reasons for treating unincorporated associations as separate entities are inap-

[11] 229 U. S. 381.

plicable to the partnership relation. However, much more vital to the determination of the case at bar is the fact that the government, throughout its discussion of unincorporated associations, has presumed that vicarious criminal liability would automatically flow once a business organization has been established as an entity, notwithstanding the requirements of a specific criminal intent in a statute. None of the cases dealing with unincorporated associations cited in the government's brief discuss or even suggest that vicarious criminal responsibility would be imposed upon the association involved.

On the contrary, the decisions dealing with the criminal responsibility of associations refuse to extend vicarious criminal liability to associations even though such an organization partakes of some of the characteristics of corporations. In *United States* v. *Food and Grocery Bureau of Southern California, Inc., et al.*, 43 F. Supp. 966 (S. D. Cal.), the court refused to extend vicarious criminal responsibility for violations of the Sherman Act to trade associations. The court in its opinion stated (p. 973):

> "• • • Our law abhors crime by association. To say that a hundred grocers, bound together in a cooperative, should be found guilty of the violation of a statute of the United States because one or two of their officers or directors were also on the Board of the Bureau, would be applying to criminal law the civil law of agency. This cannot and should not be done."

The courts have also refused to extend this civil law doctrine to labor unions in *Brotherhood of Carpenters* v. *U. S.*, 330 U. S. 395, and *United States* v. *Kemble*, 198 F. 2d 889.

Certainly there is even more compelling reason not to extend vicarious criminal responsibility to a simple partnership considering the highly personal nature of that relationship as opposed to large collective groups such as labor unions or trade associations.

It is crystal clear that the necessity for a stricter rule of criminal responsibility in the case of a corporation is not present in the case of a partnership. The cases cited by the government in its brief dealing with the criminal responsibility of corporations are not authority for treating a partnership as an entity nor are they authority for extending vicarious criminal responsibility beyond corporations where a statute makes criminal intent an element of an offense. Under the circumstances, the government's parity of reasoning is without foundation.

In the case of *Gordon* v. *United States*, 203 F. 2d 249, which was reversed by this Court upon the government's confession of error, Circuit Judge Huxman, in his dissenting opinion states the reason for limiting vicarious criminal responsibility to corporations (p. 255):

> "Strong reliance is placed upon Inland Freight Lines *v.* United States, 191 F. 2d 313, by this court. But that case is clearly distinguishable. There the sole defendant was the corporation charged with keeping false records and it was held that the knowledge of its agents was the knowledge of the corporation. That is the well established principle of criminal law as applied in the case of a corporation. It is, as the law recognizes, the only way a corporation can be held criminally responsible for violations of penal statutes. While a corporation is recognized as a separate legal entity, such separate entity

> is a pure fiction of the law. As a separate entity and aside from its agents and employees a corporation can do nothing. It has no conscience, will, or power of thought. It acts only through its agent. Their acts are the only acts it can commit and their knowledge of necessity is the only knowledge it can have."

The law with regard to the criminal responsibility of *partnerships* was aptly stated in *United States* v. *Cohn*, 128 Fed. 615, 623-624:

> "It is a rule in criminal cases that a partner is not charged by the criminal acts of his copartners, or others acting in behalf of the firm, unless he has knowledge thereof. *The law in relation to partnership* is that the partner agrees to be bound for all acts done in obedience to the law, to which there are attached certain civil liabilities for fraudulent acts or representations done or made by a partner or an agent for the purpose of affecting the firm's business. It is not considered that, in the absence of some special statute bearing upon the particular acts of a firm, whereby each partner is made the subject of punishment, one partner can be found guilty of a crime because his partner or agent has done acts that would justify his or their punishment." (Emphasis supplied.)

The government should not be permitted to avoid the requirements of the statute and the principles of criminal law applicable to partnerships by a mere juxtaposition of the names of the defendant in an information. Such practice would violate the intendment of an Act of Congress.

POINT III.

The government's inability to prove the essential element of guilty knowledge under 18 U. S. C. 835 and Sec. 222(a) of the Motor Carrier Act cannot justify the elimination of that element of the crime by statutory construction.

By reading into 18 U. S. C. 835 and Sec. 222 (a) Motor Carrier Act, a Congressional purpose to create a partnership entity separate from the partners, the government seeks to relieve itself of the necessity of proving the specific criminal intent required by the statute. The government asks this Court not only to adopt its construction that a partnership is an entity separate and apart from the partners of whom it is comprised, but also asks that this Court judicially impose vicarious criminal liability upon this imaginary entity. In effect, the government requests that this court eliminate the essential element of intent which is the gravamen of 18 U. S. C. 835 and Sec. 222 (a) Motor Carrier Act. This is the sum and substance of the government's position in this case.

The government admits that guilty knowledge is a necessary element of the crime under 18 U. S. C. 835 and Sec. 222 (a) Motor Carrier Act (Brief, p. 26). *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337; *United States* v. *Chicago Express, Inc.*, 235 F. 2d 785; *St. Johnsbury Trucking Company* v. *United States*, 220 F. 2d 393. However, the government suggests in its brief (pp. 26-27) that the crimes alleged are not unlike a public welfare offense. The opinion in the *Chicago Express* case, *supra*, by the Court of

Appeals, Seventh Circuit, squarely deals with such contention. It states (p. 786):

> "By using the word 'knowingly' in Sect. 835, we think Congress, while describing a state of mind essential for responsibility, removed violations of the relevant regulations from the classification familiarly known as offenses malum prohibitum, public welfare and civil offenses * * *."

In the *Boyce* case, *supra*, this Court, in its opinion by Justice Clark, lucidly analyzed the offense under Section 835 (p. 342):

> "The statute punishes only those who knowingly violate the regulation. This requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the regulation would be so unfair it must be held invalid."

The government is endeavoring to circumvent this basic principle of criminal law by attempting to create a non-existent party to be charged with an offense, so that it can attribute to a non-corporate employer the criminal responsibility attributed to a corporation. In the present informations, by charging a partnership as an entity with a crime, the government is endeavoring to accomplish indirectly that which, as a matter of law, it cannot do directly.

The difficulty of sustaining the burden of proof imposed by the statutes is no reason for adopting an interpretation of the statute which would surely conflict with Congress' express requirement of specific intent. It is solely within the province of Congress to change the nature of the crimes. Chief Judge Magruder's concurring opinion in the *St.*

Johnsbury case, *supra* (at p. 398), confirms this view of the case:

> "* * * If it be thought that the indicated requirement of proof will seriously hamper effective enforcement of the Interstate Commerce Commission regulations, the answer is that Congress is at liberty to fix that up by striking out * * * 'knowingly' * * * as applied to violation of regulations of the sort here involved. That is to say, Congress could convert the offense into what sometimes has been called a 'public welfare offense', requiring no element of guilty knowledge or other specific *mens rea*, by providing that whoever, by himself or by agent, transports explosives, poison gas, flammable solids, or other dangerous commodities without the safeguards which may be prescribed by a lawful regulation of the Interstate Commerce Commission, shall be guilty of a public offense and subject to penalty. See the discussion in Morissette *v.* United States, 1952, 342 U. S. 246, 252-260, 72 S. Ct. 240, 96 L. Ed. 288."

The government suggests that many common carriers organized as partnerships would escape punishment for violating Interstate Commerce Commission regulations unless they may be charged with the intentional criminal acts of their employees as corporations are. It would indeed be equally specious for the government to contend that an individual doing business under a trade name may be charged as an entity separate from the individual himself where the government similarly lacked evidence of guilty knowledge in that individual. As far as criminal responsibility is concerned, a partnership is identically the same as an individual employer, except that, instead of one individual conducting business under a trade name, it is two or more individuals doing so.

Furthermore, to carry the government's contention to its logical conclusion, then individual partners who are proven to have had the requisite guilty knowledge could avoid imprisonment by claiming the partnership as an entity is liable for the violation and that they are not personally liable.

In its brief the government presumptuously asserts that in the case of a conviction under the instant informations, the individual partners of appellee cannot suffer imprisonment. In further stating that under the instant information "sanctions can be executed only against the funds of the company," does the government imply that without the entity fiction these funds would not be available for satisfaction of a fine? In the event the partnership did not have sufficient assets to satisfy the fine, could not the government then proceed against the personal assets of the individual partners? Manifestly, the question answers itself.

The statutes require the proof of guilty knowledge on the part of the partners in order to convict the partnership. The government admits that it has no such proof. Nevertheless, a conviction of the Partnership *as named* based upon the use of the principle of vicarious responsibility, would indelibly stamp the individual partners with a criminal conviction exactly as though they had been directly named separately as defendants. Such unseemly practice may serve the purpose of the government in the case at bar, but it would open the door to flagrant violations of the constitutional rights of citizens and would amount to the conviction of the individual partners without a trial.

Conclusion.

The order of the District Court dismissing the informations should be affirmed.

Respectfully submitted,

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